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Chief Clerk of the House

FILED MAR 13 2003

H.B. No. 2877

By: Bonner

A BILL TO BE ENTITLED

AN ACT

relating to the permitting procedures of the Texas Commission on
Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 5.555(a), Water Code, is amended to read
as follows:

(a) The executive director, in accordance with procedures
provided by commission rule, shall file with the chief clerk of the
commission a response to each relevant and material public comment
on the preliminary decision filed in writing during the public
comment period.

SECTION 2. Sections 5.556(a), (c), and (d), Water Code, are
amended to read as follows:

(a) A person may request that the commission reconsider the
executive director's decision or hold a contested case hearing. A
request for reconsideration of the executive director's decision
must be filed with the commission after publication of the
preliminary decision during the period provided by commission rule.
A request for a contested case hearing must be filed with the
commission after transmittal of the executive director's response
to public comments during the period provided by commission rule.

(c) The commission may not grant a request for a contested
case hearing unless the commission determines that the request was
filed by an affected person as defined by Section 5.115 who

1 submitted written comments during the public comment period.

2 (d) The commission may not refer an issue to the State
3 Office of Administrative Hearings for a hearing unless the
4 commission determines that [~~the issue~~]:

5 (1) the issue involves a disputed question of fact;

6 (2) the person requesting the hearing has made a prima
7 facie showing based on competent evidence that there is a
8 reasonable basis for the factual dispute;

9 (3) the issue is discrete and not a broad or
10 generalized objection;

11 (4) the issue was raised during the public comment
12 period by the person requesting the hearing; and

13 (5) the issue [~~(3)~~] is relevant and material to the
14 decision on the application.

15 SECTION 3. Sections 382.056(b), (g), (h), (i), (l), (m),
16 and (n), Health and Safety Code, are amended to read as follows:

17 (b) The notice must include:

18 (1) a description of the location or proposed location
19 of the facility or federal source;

20 (2) the location at which a copy of the application is
21 available for review and copying as provided by Subsection (d);

22 (3) a description, including a telephone number, of
23 the manner in which the commission may be contacted for further
24 information;

25 (4) a description, including a telephone number, of
26 the manner in which the applicant may be contacted for further
27 information;

1 (5) a description of the applicable procedural rights
2 and obligations of the public, printed in a font style or size that
3 clearly provides emphasis and distinguishes it from the remainder
4 of the notice [~~, that includes a statement that a person who may be~~
5 ~~affected by emissions of air contaminants from the facility,~~
6 ~~proposed facility, or federal source is entitled to request a~~
7 ~~hearing from the commission~~];

8 (6) a statement that a person who may be affected by
9 emissions of air contaminants from the facility, proposed facility,
10 or federal source is entitled to request initiation of the public
11 participation process;

12 (7) a description of the procedure by which a person
13 may be placed on a mailing list in order to receive additional
14 information about the application;

15 (8) [~~47~~] the time and location of any public meeting
16 to be held under Subsection (e); and

17 (9) [~~48~~] any other information the commission by rule
18 requires.

19 (g) If, in response to the notice published under Subsection
20 (a) for a permit or permit amendment under Section 382.0518 or a
21 permit renewal review under Section 382.055, a person files a
22 request [~~requests~~] during the period provided by commission rule
23 that the commission initiate the public participation process [~~hold~~
24 ~~a public hearing~~] and the request is not withdrawn before the date
25 the preliminary decision is issued, the applicant shall publish
26 notice of the preliminary decision in a newspaper, and the
27 commission shall seek public comment on the preliminary decision in

1 accordance with [~~The commission shall consider the request for~~
2 ~~public hearing under~~] the procedures provided by Subsections
3 (i)-(n). However, the [~~The~~] commission may not seek further public
4 comment or hold a public hearing [~~under the procedures provided by~~
5 ~~Subsections (i)-(n)]~~ in response to a request for initiation of the
6 [a] public participation process [~~hearing~~] on an amendment,
7 modification, or renewal that would not result in an increase in
8 allowable emissions and would not result in the emission of an air
9 contaminant not previously emitted.

10 (h) If, in response to the notice published under Subsection
11 (a) for a permit under Section 382.054, a person requests during the
12 public comment period provided by commission rule that the
13 commission initiate the [~~hold a~~] public participation process
14 [~~hearing~~], the commission shall consider the request under the
15 procedures provided by Section 382.0561 and not under the
16 procedures provided by Subsections (i)-(n).

17 (i) The commission by rule shall establish the form and
18 content of the notice of preliminary decision under Subsection (g),
19 the manner of publication, and the duration of the public comment
20 period. The notice must include:

21 (1) the information required by Subsections
22 [~~Subsection~~] (b)(1)-(5) and (7)-(9);

23 (2) a summary of the preliminary decision;

24 (3) the location at which a copy of the preliminary
25 decision is available for review and copying as provided by
26 Subsection (j);

27 (4) a description of the manner in which comments

1 regarding the preliminary decision may be submitted that includes a
2 statement that a person who may be affected by emissions of air
3 contaminants from the facility, proposed facility, or federal
4 source is entitled to request a hearing from the commission; and

5 (5) any other information the commission by rule
6 requires.

7 (1) The executive director, in accordance with procedures
8 adopted by the commission by rule, shall file with the chief clerk
9 of the commission a response to each relevant and material public
10 comment on the preliminary decision filed in writing during the
11 public comment period.

12 (m) The chief clerk of the commission shall transmit the
13 executive director's decision, the executive director's response to
14 public comments, and instructions for requesting that the
15 commission reconsider the executive director's decision or hold a
16 contested case hearing to:

17 (1) the applicant;

18 (2) any person who submitted comments during the
19 public comment period;

20 (3) any person who requested to be on the mailing list
21 for the permit action; and

22 (4) any person who timely filed a request for
23 initiation of the [a] public participation process [hearing] in
24 response to the notice published under Subsection (a).

25 (n) Except as provided by Section 382.0561, the commission
26 shall consider a request that the commission reconsider the
27 executive director's decision or hold a contested case [~~public~~]

1 hearing in accordance with the procedures provided by Sections
2 5.556 and 5.557, Water Code.

3 SECTION 4. Section 2003.047, Government Code, is amended by
4 adding Subsection (p) to read as follows:

5 (p) In designating parties to a hearing on a permit
6 application, the administrative law judge may name as parties only
7 the executive director, the office of public interest counsel, the
8 permit applicant, and other persons whose hearing requests have
9 been granted by the commission and whose issues have been referred
10 by the commission for a contested case hearing. The executive
11 director may participate in a contested case hearing only to the
12 extent described in Section 5.228, Water Code.

13 SECTION 5. (a) This Act takes effect September 1, 2003.

14 (b) The changes in law made by this Act apply only to an
15 application for a permit, permit amendment, or permit renewal that
16 is filed with the Texas Commission on Environmental Quality on or
17 after September 1, 2003. A permit, permit amendment, or permit
18 renewal that is filed before that date is governed by the law in
19 effect on the date it was filed, and that law is continued in effect
20 for that purpose.

HOUSE COMMITTEE REPORT

APR 24 AM 11:04
HOUSE OF REPRESENTATIVES

1st Printing

By: Bonnen, Homer, Chisum

H.B. No. 2877

Substitute the following for H.B. No. 2877:

By: Smith of Harris

C.S.H.B. No. 2877

A BILL TO BE ENTITLED

AN ACT

relating to the permitting procedures of the Texas Commission on
Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 5.554, Water Code, is amended to read as
follows:

Sec. 5.554. PUBLIC MEETING. (a) During the public comment
period, the executive director may hold one or more public meetings
in the county in which the facility is located or proposed to be
located. The executive director shall hold a public meeting:

(1) on the request of a member of the legislature who
represents the general area in which the facility is located or
proposed to be located; or

(2) if the executive director determines that there is
substantial public interest in the proposed activity.

(b) The commission shall extend the public comment period
automatically until the close of the public meetings. The
commission may not extend the period during which requests for
initiation of the public participation process or requests for
reconsideration may be filed.

SECTION 2. Section 5.555(a), Water Code, is amended to read
as follows:

(a) The executive director, in accordance with procedures
provided by commission rule, shall file with the chief clerk of the

1 commission a response to each relevant and material public comment
2 on the preliminary decision filed in writing during the public
3 comment period.

4 SECTION 3. Section 5.556, Water Code, is amended by
5 amending Subsections (a), (c), and (d) and adding Subsection (g) to
6 read as follows:

7 (a) A person may request that the commission reconsider the
8 executive director's decision or hold a contested case hearing. A
9 request for reconsideration of the executive director's decision
10 must be filed with the commission after publication of the
11 preliminary decision during the period provided by commission rule.
12 A request for a contested case hearing must be filed with the
13 commission after transmittal of the executive director's response
14 to public comments during the period provided by commission rule.

15 (c) The commission may not grant a request for a contested
16 case hearing unless the commission determines that the request was
17 filed by an affected person as defined by Section 5.115 who
18 submitted written comments during the public comment period.

19 (d) The commission may not refer an issue to the State
20 Office of Administrative Hearings for a hearing unless the
21 commission determines that ~~[the issue]~~:

22 (1) the issue involves a disputed question of fact;

23 (2) the hearing request provides substantial
24 information establishing a reasonable basis for the factual dispute
25 and describes how the executive director's response to comments
26 failed to resolve the dispute;

27 (3) the issue is discrete and not a broad or

1 generalized objection;

2 (4) the issue was raised during the public comment
3 period by the person requesting the hearing; and

4 (5) the issue ~~[(3)]~~ is relevant and material to the
5 decision on the application.

6 (g) Public notice is not required for a contested case
7 hearing the commission grants under this section.

8 SECTION 4. Section 382.056, Health and Safety Code, is
9 amended by amending Subsections (b), (g), (h), (i), (l), (m), and
10 (n) and adding Subsections (s) and (t) to read as follows:

11 (b) The notice must include:

12 (1) a description of the location or proposed location
13 of the facility or federal source;

14 (2) the location at which a copy of the application is
15 available for review and copying as provided by Subsection (d);

16 (3) a description, including a telephone number, of
17 the manner in which the commission may be contacted for further
18 information;

19 (4) a description, including a telephone number, of
20 the manner in which the applicant may be contacted for further
21 information;

22 (5) a description of the applicable procedural rights
23 and obligations of the public, printed in a font style or size that
24 clearly provides emphasis and distinguishes it from the remainder
25 of the notice ~~[- that includes a statement that a person who may be~~
26 ~~affected by emissions of air contaminants from the facility,~~
27 ~~proposed facility, or federal source is entitled to request a~~

1 ~~hearing from the commission~~];

2 (6) a statement that a person who may be affected by
3 emissions of air contaminants from the facility, proposed facility,
4 or federal source is entitled to request initiation of the public
5 participation process;

6 (7) a description of the procedure by which a person
7 may be placed on a mailing list in order to receive additional
8 information about the application;

9 (8) ~~[(7)]~~ the time and location of any public meeting
10 to be held under Subsection (e); and

11 (9) ~~[(8)]~~ any other information the commission by rule
12 requires.

13 (g) If, in response to the notice published under Subsection
14 (a) for a permit or permit amendment under Section 382.0518 or a
15 permit renewal review under Section 382.055, a person files a
16 request ~~[requests]~~ during the period provided by commission rule
17 that the commission initiate the public participation process ~~[hold~~
18 ~~a public hearing]~~ and the request is not withdrawn before the date
19 the preliminary decision is issued, the applicant shall publish
20 notice of the preliminary decision in a newspaper, and the
21 commission shall seek public comment on the preliminary decision in
22 accordance with ~~[The commission shall consider the request for~~
23 ~~public hearing under]~~ the procedures provided by Subsections
24 (i)-(n). However, the ~~[The]~~ commission may not seek further public
25 comment or hold a public hearing ~~[under the procedures provided by~~
26 ~~Subsections (i)-(n)]~~ in response to a request for initiation of the
27 [a] public participation process ~~[hearing]~~ on an amendment,

1 modification, or renewal that would not result in an increase in
2 allowable emissions and would not result in the emission of an air
3 contaminant not previously emitted.

4 (h) If, in response to the notice published under Subsection
5 (a) for a permit under Section 382.054, a person requests during the
6 public comment period provided by commission rule that the
7 commission initiate the ~~[hold-a]~~ public participation process
8 ~~[hearing]~~, the commission shall consider the request under the
9 procedures provided by Section 382.0561 and not under the
10 procedures provided by Subsections (i)-(n).

11 (i) The commission by rule shall establish the form and
12 content of the notice of preliminary decision under Subsection (g),
13 the manner of publication, and the duration of the public comment
14 period. The notice must include:

15 (1) the information required by Subsections
16 ~~[Subsection]~~ (b) (1)-(5) and (7)-(9);

17 (2) a summary of the preliminary decision;

18 (3) the location at which a copy of the preliminary
19 decision is available for review and copying as provided by
20 Subsection (j);

21 (4) a description of the manner in which comments
22 regarding the preliminary decision may be submitted that includes a
23 statement that a person who may be affected by emissions of air
24 contaminants from the facility, proposed facility, or federal
25 source is entitled to request a hearing from the commission; and

26 (5) any other information the commission by rule
27 requires.

1 (1) The executive director, in accordance with procedures
2 adopted by the commission by rule, shall file with the chief clerk
3 of the commission a response to each relevant and material public
4 comment on the preliminary decision filed in writing during the
5 public comment period.

6 (m) The chief clerk of the commission shall transmit the
7 executive director's decision, the executive director's response to
8 public comments, and instructions for requesting that the
9 commission reconsider the executive director's decision or hold a
10 contested case hearing to:

11 (1) the applicant;

12 (2) any person who submitted comments during the
13 public comment period;

14 (3) any person who requested to be on the mailing list
15 for the permit action; and

16 (4) any person who timely filed a request for
17 initiation of the [a] public participation process [hearing] in
18 response to the notice published under Subsection (a).

19 (n) Except as provided by Section 382.0561, the commission
20 shall consider a request that the commission reconsider the
21 executive director's decision or hold a contested case [public]
22 hearing in accordance with the procedures provided by Sections
23 5.556 and 5.557, Water Code.

24 (s) If a request to initiate the public participation
25 process is not filed during the period prescribed by commission
26 rule for a permit or permit amendment under Section 382.0518 or for
27 a permit renewal review under Section 382.055, the commission shall

1 conduct a public hearing held in response to a later public notice
2 required solely by federal program requirements in accordance with
3 Section 382.0561 and not under Chapter 2001, Government Code.

4 (t) The commission shall extend the public comment period
5 automatically until the close of the public meetings held under
6 Subsection (k). The commission may not extend the period during
7 which requests for initiation of the public participation process
8 or requests for reconsideration may be filed.

9 SECTION 5. Section 2003.047, Government Code, is amended by
10 adding Subsections (p) and (q) to read as follows:

11 (p) In designating parties to a hearing on a permit
12 application, the administrative law judge may name as parties only
13 the executive director, the office of public interest counsel, the
14 permit applicant, and other persons whose hearing requests have
15 been granted by the commission and whose issues have been referred
16 by the commission for a contested case hearing. The executive
17 director may participate in a contested case hearing only to the
18 extent described in Section 5.228, Water Code.

19 (q) An administrative law judge may make a summary
20 disposition of the issues referred by the commission as provided by
21 commission rules.

22 SECTION 6. (a) This Act takes effect September 1, 2003.

23 (b) The changes in law made by this Act apply only to an
24 application for a permit, permit amendment, or permit renewal that
25 is filed with the Texas Commission on Environmental Quality on or
26 after September 1, 2003. A permit, permit amendment, or permit
27 renewal that is filed before that date is governed by the law in

COMMITTEE REPORT

The Honorable Tom Craddick
Speaker of the House of Representatives

4-15-03
(date)

Sir:

We, your COMMITTEE ON ENVIRONMENTAL REGULATION

to whom was referred HB 2877 have had the same under consideration and beg to report back with the recommendation that it

- () do pass, without amendment.
- () do pass, with amendment(s).
- (X) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.
- (X) yes () no A fiscal note was requested.
- () yes (X) no A criminal justice policy impact statement was requested.
- () yes (X) no An equalized educational funding impact statement was requested.
- () yes (X) no An actuarial analysis was requested.
- () yes (X) no A water development policy impact statement was requested.
- () yes (X) no A tax equity note was requested.
- () The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor _____

Joint Sponsors: _____ / _____ / _____

Co-Sponsors: _____

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Bonnen, Chair	X			
Kuempel, Vice-chair				X
Crownover	X			
Chisum	X			
Flores				X
Smith, W.	X			
West	X			

Total
5 aye
0 nay
0 present, not voting
2 absent

Dennis Bonnen
CHAIR

BILL ANALYSIS

C.S.H.B. 2877
By: Bonnen
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 1999, the Texas Legislature passed HB 801 after weeks of negotiations by representatives of groups supporting and opposed to the legislation. The version that was passed represented a compromise by very diverse interests.

The purpose of HB 801 was to improve public notice, clarify the role of notice and comment in state process, and restrict contested cases to issues involving permits instead of the whole permit. The process also envisioned that issues would be narrowed or eliminated as a permit in controversy went through the process outlined in HB 801.

As in any hurriedly-crafted compromise, following passage a number of problems were uncovered. Some of the issues were discussed extensively by the negotiating parties, and the agreed language has proved inadequate to accomplish the original goals. Some of the issues were understood by the parties agreeing, but written in a way that the agency interpreted them otherwise. At least one issue was simply not foreseen by the participants.

The purpose of CSHB 2877 is to provide that the TCEQ only has to respond to written comments during the notice and comment process; clarify the times that a request for reconsideration of the executive director's decision and a request for a contested case hearing are made; clarify that the only person who can request a contested case is a person who has participated in the full process to that point and is an affected person; tighten the requirements for issues that are referred to a contested case in response to practices that seem to currently allow broad issues to be referred; clarify the process in the air permitting statutes that currently allows an early request for hearing to stand as a request for contested case hearing; and limit who can be named parties to a hearing at the State Office of Hearing Examiners.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill modifies rulemaking authority to the Texas Commission on Environmental Quality in SECTION 4 (Section 382.056, Health and Safety Code) of this bill.

ANALYSIS

SECTION 1. Amends Sec. 5.554, Water Code, by adding a Subsection (b) providing that the public comment period will be automatically extended to the close of any public meeting held in accordance with Subsection (a). The deadline for filing requests for initiation of the public participation process or requests for reconsideration will not be extended due to a public meeting.

SECTION 2. Amends Sec. 5.555(a), Water Code, to specify that the executive director must respond only to comments filed in writing.

SECTION 3. Amends Sec. 5.556(a), Water Code, to clarify that a request for reconsideration of the executive's director's decision must be filed after publication of the preliminary decision and that a request for a contested case hearing must be filed after the executive director's response to public comments is transmitted as provided by commission rule.

Amends Sec. 5.556(c), Water Code, by restricting the granting of contested case hearings to affected persons who submitted written comments during the public comment period.

Amends Sec. 5.556(d), Water Code, by adding requirements when the commission is referring issues to the State Office of Administrative Hearings that the hearing request must provide substantial information establishing a reasonable basis for the factual dispute and describe how the executive director's response to comments failed to resolve the dispute. The new language also provides that the issue is discrete and not a broad or generalized objection and that the issue was raised during the public comment period by the person requesting the hearing.

Amends Sec. 5.556, Water Code by adding a new Subsection (g) that provides that public notice is not required for a contested case hearing the commissione grants under this section.

SECTION 4. Amends Sec. 382.056(b), Health and Safety Code, by adding the word "applicable" to modify "procedural rights" in the notice requirement, deleting a statement that an affected person can request a hearing and adding in its place a statement that an affected person can request initiation of the public participation process.

Amends Sec. 382.056(g), Health and Safety Code, by clarifying that a request this point in the process is for initiation of the public participation process and not a contested case hearing.

Amends Sec. 382.056(h), Health and Safety Code, by clarifying that the commission initiates the public participation process and not a contested case hearing at this point in the process.

Amends Sec. 382.056(i), Health and Safety Code, by clarifying that this second notice is of the preliminary decision and changes the notice to an affected person to reference the right to request a hearing.

Amends Sec. 382.056(l), Health and Safety Code, to specify that the executive director must respond only to comments filed in writing

Amends Sec. 382.056(m), Health and Safety Code, to clarify that the person who receives the notice at this point includes those who filed a request to initiate the public participation process instead of a public hearing.

Amends Sec. 382.056 (n), Health and Safety Code, by changing the word "public" to "contested case".

Amends Sec. 382.056, Health and Safety Code, by adding a new Subsection (s) that provides that when no timely request to initiate the public participation process is filed for a preconstruction permit or permit amendment under Section 382.0516 or a permit renewal under Section 382.055, a public hearing held in response to a subsequent public notice required solely by federal program requirements is conducted in accordance with Section 382.0561 and not under Chapter 2001, Government Code.

Amends Sec. 382.056, Health and Safety Code, by adding a new Subsection (t) that provides that the public comment period will automatically be extended to the close of any public meeting. The deadline for filing requests for initiation of the public participation process or requests for reconsideration will not be extended due to a public meeting.

SECTION 5. Amends Sec. 2003.047, Government Code, by adding a new Subsection (p) limiting the State Office of Administrative Hearings to only allowing the executive director, the office of public interest counsel, the permit applicant, and other persons whose hearing requests have been granted by the commission and whose issues have been referred by the commission for a contested case hearing to be named as parties for a hearing on a permit application. The section also limits the executive director's participation to that described in Sec. 5.228, Water Code.

Amends Sec. 2003.047, Government Code, by adding a new Subsection (q) clarifying that an administrative law judge may dispose of the issues referred by the TCEQ by summary disposition, as applicable under TCEQ rules.

SECTION 6. Provides an effective date of September 1, 2003, and limits the application of these changes in law to applications for a permit, permit, amendment, or permit renewal filed with the Texas Commission on Environmental Quality on or after September 1, 2003. This SECTION further provides that a permit, permit amendment, or permit renewal filed before that date is governed by the law in effect on the date it was filed and continues the law in effect for that purpose.

EFFECTIVE DATE

September 1, 2003

COMPARISON OF ORIGINAL TO SUBSTITUTE

SECTION 1 revisions amend Section 5.554 of the Water Code to add a Subsection (b) that provides that the public comment period will be automatically extended to the close of any public meeting held in accordance with Subsection (a). But the deadline for filing requests for initiation of the public participation process or requests for reconsideration will not be extended due to a public meeting.

SECTION 2 is SECTION 1 renumbered.

SECTION 3 revisions amend Section 5.556 of the Water Code to revise Paragraph (d)(2) to prohibit the TCEQ from referring an issue to SOAH for a hearing unless the hearing request 1) provides substantial information establishing a reasonable basis for the requisite factual dispute and 2) describes how the executive director's response to comments failed to resolve the dispute.

SECTION 3 revisions add a new Subsection (g) to Section 5.556 of the Water Code that provides that if the TCEQ grants a request for contested case hearing, public notice of the contested case hearing shall not be required.

SECTION 4 revisions amend Section 5.556 of the Water Code to add a new Subsection (s) to provide that when no timely request to initiate the public participation process is filed for a preconstruction permit or permit amendment under Section 382.0516 or a permit renewal under Section 382.055, a public hearing held in response to a subsequent public notice required solely by federal program requirements is conducted in accordance with Section 382.0561 and not under Chapter 2001, Government Code.

SECTION 4 revisions amend Section 5.556 of the Water Code to add a new Subsection (t) to provide that the public comment period will automatically be extended to the close of any public meeting. But the deadline for filing requests for initiation of the public participation process or requests for reconsideration will not be extended due to a public meeting. This language parallels the change made by Section 1 above.

SECTION 5 revisions amend Section 2003.047 of the Government Code by adding Subsection (q), which clarifies that an administrative law judge may dispose of the issues referred by the TCEQ by summary disposition, as applicable under TCEQ rules.

SECTION 6 is SECTION 5 renumbered.

SUMMARY OF COMMITTEE ACTION

HB 2877

April 8, 2003 2:00PM or upon final adjourn./recess

Considered in public hearing

Committee substitute considered in committee

Testimony taken in committee (See attached witness list.)

Left pending in committee

April 15, 2003 8:00AM

Considered in public hearing

Committee substitute considered in committee

Reported favorably as substituted

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WITNESS LIST

HB 2877
HOUSE COMMITTEE REPORT
Environmental Regulation Committee

April 8, 2003 - 2:00PM or upon final adjourn./recess

For: Fisher, Jon (Texas Chemical Council)
Miksa, Mary (Texas Association of Business and Chambers
of Commerce)

Against: Lowerre, Richard (City of Del Rio, Kleberg County
Commissioner Precinct No. 1, Martiney Environmental
Group Defenders)
Sisk, Cathy J. (Harris County Commissioners Court)

Committee Substitute (CSHB 2877)

For: Morriss, James (Self and Attorney)

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

Revision 1

April 18, 2003

TO: Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

FROM: John Keel, Director, Legislative Budget Board

IN RE: HB2877 by Bonnen (Relating to the permitting procedures of the Texas Commission on Environmental Quality.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would require the Texas Commission on Environmental Quality (TCEQ) to extend public comment periods and makes changes to contested case hearing requirements. It would also change requirements for responding to public comments and place restrictions on the types of issues that can be referred to hearing by the TCEQ.

The changes proposed by the bill are not expected to require significant additional resources to implement.

Local Government Impact

No significant fiscal implication to units of local government is anticipated. Local governments could experience increased public notification costs. However, these costs are not expected to be significant.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JK, CL, TL

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LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

April 18, 2003

TO: Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

FROM: John Keel, Director, Legislative Budget Board

IN RE: HB2877 by Bonnen (Relating to the permitting procedures of the Texas Commission on Environmental Quality.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would require the Texas Commission on Environmental Quality (TCEQ) to extend public comment periods and makes changes to contested case hearing requirements. It would also change requirements for responding to public comments and place restrictions on the types of issues that can be referred to hearing by the TCEQ.

The changes proposed by the bill are not expected to require significant additional resources to implement.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JK, CL, TL

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LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

April 7, 2003

TO: Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

FROM: John Keel, Director, Legislative Budget Board

IN RE: HB2877 by Bonnen (Relating to the permitting procedures of the Texas Commission on Environmental Quality.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would revise the public participation procedures applicable to environmental permit applications where there is an opportunity to request a contested case hearing. The Executive Director (ED) of the Texas Commission on Environmental Quality (ED) would be required to respond only to comments received in writing, in contrast to the current process that requires a response to spoken comments received at public meetings.

The bill would impose stricter time frames for the filing of hearing requests. As opposed to the current process that allows for hearing requests to be considered timely at any point after the application is filed, a hearing request would not be timely unless it was filed during the prescribed period following transmittal of the ED's response to comments. The bill also would revise the time frame for filing requests for reconsideration to allow for filing after the publication of the ED's preliminary decision.

New criteria would also be imposed on persons requesting a hearing with the State Office of Administrative Hearings (SOAH). Only persons who submitted timely written comments could request a hearing, and their hearing request could only relate to the issues they raised during the comment period and could not relate to issues that may have been raised by others. The bill also revised the criteria for issues that must be contained in a valid hearing request. Under the bill the issues would have to be supported by competent evidence showing a reasonable basis for a factual dispute. The issue would have to be discrete and not a broad or general objection.

The bill would also impose requirements for air applications. A person challenging issuance of an air permit would be required to file a "request for initiation of the public participation process" in response to the first notice of the application, rather than a request for hearing.

The bill could result in some increased administrative costs to the TCEQ. However, such costs are not expected to be significant. There could be fewer cases referred to the SOAH as a result of the bill's passage. However, such savings are not expected to be significant.

8

Local Government Impact

No significant fiscal implications are anticipated for local governments.

Local governments which have equipment going through the permitting process may experience increased costs due to additional public notice criteria. However, such costs are not expected to be significant.

Source Agencies: 360 State Office of Administrative Hearings, 582 Commission on Environmental Quality
LBB Staff: JK, CL, TL

9

ADOPTED

MAY 02 2003

Robert H. ...
Chief Clerk
House of Representatives

amended

By: BONNEN

Substitute the following for 14.B. No. 2877:

By: SMITH, WAYNE

14.B. No. 2877

C.S. 14.B. No. 2877

A BILL TO BE ENTITLED

AN ACT

relating to the permitting procedures of the Texas Commission on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 5.554, Water Code, is amended to read as follows:

Sec. 5.554. PUBLIC MEETING. (a) During the public comment period, the executive director may hold one or more public meetings in the county in which the facility is located or proposed to be located. The executive director shall hold a public meeting:

(1) on the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located; or

(2) if the executive director determines that there is substantial public interest in the proposed activity.

(b) The commission shall extend the public comment period automatically until the close of the public meetings. The commission may not extend the period during which requests for initiation of the public participation process or requests for reconsideration may be filed.

SECTION 2. Section 5.555(a), Water Code, is amended to read as follows:

(a) The executive director, in accordance with procedures provided by commission rule, shall file with the chief clerk of the

1 commission a response to each relevant and material public comment
2 on the preliminary decision filed in writing during the public
3 comment period.

4 SECTION 3. Section 5.556, Water Code, is amended by
5 amending Subsections (a), (c), and (d) and adding Subsection (g) to
6 read as follows:

7 (a) A person may request that the commission reconsider the
8 executive director's decision or hold a contested case hearing. A
9 request for reconsideration of the executive director's decision
10 must be filed with the commission after publication of the
11 preliminary decision during the period provided by commission rule.
12 A request for a contested case hearing must be filed with the
13 commission after transmittal of the executive director's response
14 to public comments during the period provided by commission rule.

15 (c) The commission may not grant a request for a contested
16 case hearing unless the commission determines that the request was
17 filed by an affected person as defined by Section 5.115 who
18 submitted written comments during the public comment period.

19 (d) The commission may not refer an issue to the State
20 Office of Administrative Hearings for a hearing unless the
21 commission determines that [~~the issue~~]:

22 (1) the issue involves a disputed question of fact;

23 (2) the hearing request provides substantial
24 information establishing a reasonable basis for the factual dispute
25 and describes how the executive director's response to comments
26 failed to resolve the dispute;

27 (3) the issue is discrete and not a broad or

11/11/82/11

1 generalized objection;

2 (4) the issue was raised during the public comment
3 period by the person requesting the hearing; and

4 (5) the issue [43] is relevant and material to the
5 decision on the application.

6 (g) Public notice is not required for a contested case -
7 hearing the commission grants under this section. e

8 SECTION 4. Section 382.056, Health and Safety Code, is
9 amended by amending Subsections (b), (g), (h), (i), (l), (m), and
10 (n) and adding Subsections (s) and (t) to read as follows:

11 (b) The notice must include:

12 (1) a description of the location or proposed location
13 of the facility or federal source;

14 (2) the location at which a copy of the application is
15 available for review and copying as provided by Subsection (d);

16 (3) a description, including a telephone number, of
17 the manner in which the commission may be contacted for further
18 information;

19 (4) a description, including a telephone number, of
20 the manner in which the applicant may be contacted for further
21 information;

22 (5) a description of the applicable procedural rights
23 and obligations of the public, printed in a font style or size that
24 clearly provides emphasis and distinguishes it from the remainder
25 of the notice [~~that includes a statement that a person who may be~~
26 ~~affected by emissions of air contaminants from the facility,~~
27 ~~proposed facility, or federal source is entitled to request a~~

1 ~~hearing from the commission];~~

2 (6) a statement that a person who may be affected by
3 emissions of air contaminants from the facility, proposed facility,
4 or federal source is entitled to request initiation of the public
5 participation process;

6 (7) a description of the procedure by which a person
7 may be placed on a mailing list in order to receive additional
8 information about the application;

9 (8) ~~[(7)]~~ the time and location of any public meeting
10 to be held under Subsection (e); and

11 (9) ~~[(8)]~~ any other information the commission by rule
12 requires.

13 (g) If, in response to the notice published under Subsection
14 (a) for a permit or permit amendment under Section 382.0518 or a
15 permit renewal review under Section 382.055, a person files a
16 request ~~[requests]~~ during the period provided by commission rule
17 that the commission initiate the public participation process ~~[hold~~
18 ~~a public hearing]~~ and the request is not withdrawn before the date
19 the preliminary decision is issued, the applicant shall publish
20 notice of the preliminary decision in a newspaper, and the
21 commission shall seek public comment on the preliminary decision in
22 accordance with ~~[. The commission shall consider the request for~~
23 ~~public hearing under]~~ the procedures provided by Subsections
24 (i)-(n). However, the ~~[The]~~ commission may not seek further public
25 comment or hold a public hearing ~~[under the procedures provided by~~
26 ~~Subsections (i)-(n)]~~ in response to a request for initiation of the
27 [a] public participation process ~~[hearing]~~ on an amendment,

1 modification, or renewal that would not result in an increase in
2 allowable emissions and would not result in the emission of an air
3 contaminant not previously emitted.

4 (h) If, in response to the notice published under Subsection
5 (a) for a permit under Section 382.054, a person requests during the
6 public comment period provided by commission rule that the
7 commission initiate the [hold-a] public participation process
8 ~~[hearing]~~, the commission shall consider the request under the
9 procedures provided by Section 382.0561 and not under the
0 procedures provided by Subsections (i)-(n).

1 (i) The commission by rule shall establish the form and
2 content of the notice of preliminary decision under Subsection (g),
3 the manner of publication, and the duration of the public comment
4 period. The notice must include:

5 (1) the information required by Subsections
6 ~~[Subsection]~~ (b)(1)-(5) and (7)-(9);

7 (2) a summary of the preliminary decision;

8 (3) the location at which a copy of the preliminary
9 decision is available for review and copying as provided by
0 Subsection (j);

1 (4) a description of the manner in which comments
2 regarding the preliminary decision may be submitted that includes a
3 statement that a person who may be affected by emissions of air
4 contaminants from the facility, proposed facility, or federal
25 source is entitled to request a hearing from the commission; and

26 (5) any other information the commission by rule
27 requires.

(l) The executive director, in accordance with procedures adopted by the commission by rule, shall file with the chief clerk of the commission a response to each relevant and material public comment on the preliminary decision filed in writing during the public comment period.

(m) The chief clerk of the commission shall transmit the executive director's decision, the executive director's response to public comments, and instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing to:

(1) the applicant;

(2) any person who submitted comments during the public comment period;

(3) any person who requested to be on the mailing list for the permit action; and

(4) any person who timely filed a request for initiation of the [a] public participation process [hearing] in response to the notice published under Subsection (a).

(n) Except as provided by Section 382.0561, the commission shall consider a request that the commission reconsider the executive director's decision or hold a contested case [~~public~~] hearing in accordance with the procedures provided by Sections 5.556 and 5.557, Water Code.

(s) If a request to initiate the public participation process is not filed during the period prescribed by commission rule for a permit or permit amendment under Section 382.0518 or for a permit renewal review under Section 382.055, the commission shall

1 conduct a public hearing held in response to a later public notice
2 required solely by federal program requirements in accordance with
3 Section 382.0561 and not under Chapter 2001, Government Code.

4 (t) The commission shall extend the public comment period
5 automatically until the close of the public meetings held under
6 Subsection (k). The commission may not extend the period during
7 which requests for initiation of the public participation process
8 or requests for reconsideration may be filed.

9 SECTION 5. Section 2003.047, Government Code, is amended by
10 adding Subsections (p) and (q) to read as follows:

11 (p) In designating parties to a hearing on a permit
12 application, the administrative law judge may name as parties only
13 the executive director, the office of public interest counsel, the
14 permit applicant, and other persons whose hearing requests have
15 been granted by the commission and whose issues have been referred
16 by the commission for a contested case hearing. The executive
17 director may participate in a contested case hearing only to the
18 extent described in Section 5.228, Water Code.

19 (q) An administrative law judge may make a summary
20 disposition of the issues referred by the commission as provided by
21 commission rules.

22 SECTION 6. (a) This Act takes effect September 1, 2003.

23 (b) The changes in law made by this Act apply only to an
24 application for a permit, permit amendment, or permit renewal that
25 is filed with the Texas Commission on Environmental Quality on or
26 after September 1, 2003. A permit, permit amendment, or permit
27 renewal that is filed before that date is governed by the law in

LIST OF HOUSE AMENDMENTS CONSIDERED TODAY

HB2877-Second Reading

<u>AMENDMENT#</u>	<u>AUTHOR</u>	<u>DESCRIPTION</u>	<u>ACTION</u>
1	Bonnen	Amendment	Adopted

ADOPTED



FLOOR AMENDMENT NO. 1

MAY 02 2003

BY:

Bomer

Robert Hanes
Chief Clerk
House of Representatives

Amend C.S.H.B. No. 2877 on page 3 by striking lines 6 and 7

and substituting:

(((INSERT)))

Notwithstanding other law, public notice of a contested case
hearing the commission grants under this section is not required.
The commission by rule shall provide for notice of a hearing the
commission grants under this section to be given to the applicant,
the office of public interest counsel, the executive director, and
the persons whose hearing requests have been granted.

gja 2877

F

ENGROSSED
SECOND READING

By: Bonnen, Homer, Chisum, Stick

H.B. No. 2877

A BILL TO BE ENTITLED

AN ACT

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(1) on the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located; or

(2) if the executive director determines that there is substantial public interest in the proposed activity.

(b) The commission shall extend the public comment period automatically until the close of the public meetings. The commission may not extend the period during which requests for initiation of the public participation process or requests for reconsideration may be filed.

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1 commission a response to each relevant and material public comment
2 on the preliminary decision filed in writing during the public
3 comment period.

4 SECTION 3. Section 5.556, Water Code, is amended by
5 amending Subsections (a), (c), and (d) and adding Subsection (g) to
6 read as follows:

7 (a) A person may request that the commission reconsider the
8 executive director's decision or hold a contested case hearing. A
9 request for reconsideration of the executive director's decision
10 must be filed with the commission after publication of the
11 preliminary decision during the period provided by commission rule.
12 A request for a contested case hearing must be filed with the
13 commission after transmittal of the executive director's response
14 to public comments during the period provided by commission rule.

15 (c) The commission may not grant a request for a contested
16 case hearing unless the commission determines that the request was
17 filed by an affected person as defined by Section 5.115 who
18 submitted written comments during the public comment period.

19 (d) The commission may not refer an issue to the State
20 Office of Administrative Hearings for a hearing unless the
21 commission determines that ~~[the issue]~~:

22 (1) the issue involves a disputed question of fact;

23 (2) the hearing request provides substantial
24 information establishing a reasonable basis for the factual dispute
25 and describes how the executive director's response to comments
26 failed to resolve the dispute;

27 (3) the issue is discrete and not a broad or

1 generalized objection;

2 (4) the issue was raised during the public comment
3 period by the person requesting the hearing; and

4 (5) the issue [~~43~~] is relevant and material to the
5 decision on the application.

6 (g) Notwithstanding other law, public notice of a contested
7 case hearing the commission grants under this section is not
8 required. The commission by rule shall provide for notice of a
9 hearing the commission grants under this section to be given to the
10 applicant, the office of public interest counsel, the executive
11 director, and the persons whose hearing requests have been granted.

12 SECTION 4. Section 382.056, Health and Safety Code, is
13 amended by amending Subsections (b), (g), (h), (i), (l), (m), and
14 (n) and adding Subsections (s) and (t) to read as follows:

15 (b) The notice must include:

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17 of the facility or federal source;

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19 available for review and copying as provided by Subsection (d);

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7 emissions of air contaminants from the facility, proposed facility,
8 or federal source is entitled to request initiation of the public
9 participation process;

10 (7) a description of the procedure by which a person
11 may be placed on a mailing list in order to receive additional
12 information about the application;

13 (8) [~~47~~] the time and location of any public meeting
14 to be held under Subsection (e); and

15 (9) [~~48~~] any other information the commission by rule
16 requires.

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18 (a) for a permit or permit amendment under Section 382.0518 or a
19 permit renewal review under Section 382.055, a person files a
20 request [~~requeste~~] during the period provided by commission rule
21 that the commission initiate the public participation process [~~hold~~
22 ~~a public hearing~~] and the request is not withdrawn before the date
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25 commission shall seek public comment on the preliminary decision in
26 accordance with [~~The commission shall consider the request for~~
27 ~~public hearing under~~] the procedures provided by Subsections

F

HOUSE ENGROSSMENT

By: Bonnen, Homer, Chisum, Stick

H.B. No. 2877

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12 A request for a contested case hearing must be filed with the
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14 to public comments during the period provided by commission rule.

15 (c) The commission may not grant a request for a contested
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17 filed by an affected person as defined by Section 5.115 who
18 submitted written comments during the public comment period.

19 (d) The commission may not refer an issue to the State
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21 commission determines that ~~[the issue]~~:

22 (1) the issue involves a disputed question of fact;

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24 information establishing a reasonable basis for the factual dispute
25 and describes how the executive director's response to comments
26 failed to resolve the dispute;

27 (3) the issue is discrete and not a broad or

1 generalized objection;

2 (4) the issue was raised during the public comment
3 period by the person requesting the hearing; and

4 (5) the issue [~~43~~] is relevant and material to the
5 decision on the application.

6 (g) Notwithstanding other law, public notice of a contested
7 case hearing the commission grants under this section is not
8 required. The commission by rule shall provide for notice of a
9 hearing the commission grants under this section to be given to the
10 applicant, the office of public interest counsel, the executive
11 director, and the persons whose hearing requests have been granted.

12 SECTION 4. Section 382.056, Health and Safety Code, is
13 amended by amending Subsections (b), (g), (h), (i), (l), (m), and
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15 (b) The notice must include:

16 (1) a description of the location or proposed location
17 of the facility or federal source;

18 (2) the location at which a copy of the application is
19 available for review and copying as provided by Subsection (d);

20 (3) a description, including a telephone number, of
21 the manner in which the commission may be contacted for further
22 information;

23 (4) a description, including a telephone number, of
24 the manner in which the applicant may be contacted for further
25 information;

26 (5) a description of the applicable procedural rights
27 and obligations of the public, printed in a font style or size that

1 clearly provides emphasis and distinguishes it from the remainder
2 of the notice [~~that includes a statement that a person who may be~~
3 ~~affected by emissions of air contaminants from the facility,~~
4 ~~proposed facility, or federal source is entitled to request a~~
5 ~~hearing from the commission~~];

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7 emissions of air contaminants from the facility, proposed facility,
8 or federal source is entitled to request initiation of the public
9 participation process;

10 (7) a description of the procedure by which a person
11 may be placed on a mailing list in order to receive additional
12 information about the application;

13 (8) [~~(7)~~] the time and location of any public meeting
14 to be held under Subsection (e); and

15 (9) [~~(8)~~] any other information the commission by rule
16 requires.

17 (g) If, in response to the notice published under Subsection
18 (a) for a permit or permit amendment under Section 382.0518 or a
19 permit renewal review under Section 382.055, a person files a
20 request [~~requests~~] during the period provided by commission rule
21 that the commission initiate the public participation process [~~hold~~
22 ~~a public hearing~~] and the request is not withdrawn before the date
23 the preliminary decision is issued, the applicant shall publish
24 notice of the preliminary decision in a newspaper, and the
25 commission shall seek public comment on the preliminary decision in
26 accordance with [~~The commission shall consider the request for~~
27 ~~public hearing under~~] the procedures provided by Subsections

1 (i)-(n). However, the ~~[The]~~ commission may not seek further public
2 comment or hold a public hearing ~~[under the procedures provided by~~
3 ~~Subsections (i)-(n)]~~ in response to a request for initiation of the
4 ~~[a]~~ public participation process ~~[hearing]~~ on an amendment,
5 modification, or renewal that would not result in an increase in
6 allowable emissions and would not result in the emission of an air
7 contaminant not previously emitted.

8 (h) If, in response to the notice published under Subsection
9 (a) for a permit under Section 382.054, a person requests during the
10 public comment period provided by commission rule that the
11 commission initiate the ~~[hold a]~~ public participation process
12 ~~[hearing]~~, the commission shall consider the request under the
13 procedures provided by Section 382.0561 and not under the
14 procedures provided by Subsections (i)-(n).

15 (i) The commission by rule shall establish the form and
16 content of the notice of preliminary decision under Subsection (g),
17 the manner of publication, and the duration of the public comment
18 period. The notice must include:

19 (1) the information required by Subsections
20 ~~[Subsection]~~ (b)(1)-(5) and (7)-(9);

21 (2) a summary of the preliminary decision;

22 (3) the location at which a copy of the preliminary
23 decision is available for review and copying as provided by
24 Subsection (j);

25 (4) a description of the manner in which comments
26 regarding the preliminary decision may be submitted that includes a
27 statement that a person who may be affected by emissions of air

1 contaminants from the facility, proposed facility, or federal
2 source is entitled to request a hearing from the commission; and

3 (5) any other information the commission by rule
4 requires.

5 (1) The executive director, in accordance with procedures
6 adopted by the commission by rule, shall file with the chief clerk
7 of the commission a response to each relevant and material public
8 comment on the preliminary decision filed in writing during the
9 public comment period.

10 (m) The chief clerk of the commission shall transmit the
11 executive director's decision, the executive director's response to
12 public comments, and instructions for requesting that the
13 commission reconsider the executive director's decision or hold a
14 contested case hearing to:

15 (1) the applicant;

16 (2) any person who submitted comments during the
17 public comment period;

18 (3) any person who requested to be on the mailing list
19 for the permit action; and

20 (4) any person who timely filed a request for
21 initiation of the [a] public participation process ~~[hearing]~~ in
22 response to the notice published under Subsection (a).

23 (n) Except as provided by Section 382.0561, the commission
24 shall consider a request that the commission reconsider the
25 executive director's decision or hold a contested case ~~[public]~~
26 hearing in accordance with the procedures provided by Sections
27 5.556 and 5.557, Water Code.

1 (s) If a request to initiate the public participation
2 process is not filed during the period prescribed by commission
3 rule for a permit or permit amendment under Section 382.0518 or for
4 a permit renewal review under Section 382.055, the commission shall
5 conduct a public hearing held in response to a later public notice
6 required solely by federal program requirements in accordance with
7 Section 382.0561 and not under Chapter 2001, Government Code.

8 (t) The commission shall extend the public comment period
9 automatically until the close of the public meetings held under
10 Subsection (k). The commission may not extend the period during
11 which requests for initiation of the public participation process
12 or requests for reconsideration may be filed.

13 SECTION 5. Section 2003.047, Government Code, is amended by
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16 application, the administrative law judge may name as parties only
17 the executive director, the office of public interest counsel, the
18 permit applicant, and other persons whose hearing requests have
19 been granted by the commission and whose issues have been referred
20 by the commission for a contested case hearing. The executive
21 director may participate in a contested case hearing only to the
22 extent described in Section 5.228, Water Code.

23 (q) An administrative law judge may make a summary
24 disposition of the issues referred by the commission as provided by
25 commission rules.

26 SECTION 6. (a) This Act takes effect September 1, 2003.

27 (b) The changes in law made by this Act apply only to an

1 application for a permit, permit amendment, or permit renewal that
2 is filed with the Texas Commission on Environmental Quality on or
3 after September 1, 2003. A permit, permit amendment, or permit
4 renewal that is filed before that date is governed by the law in
5 effect on the date it was filed, and that law is continued in effect
6 for that purpose.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION
Revision 1

April 18, 2003

TO: Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

FROM: John Keel, Director, Legislative Budget Board

IN RE: HB2877 by Bonnen (Relating to the permitting procedures of the Texas Commission on Environmental Quality.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would require the Texas Commission on Environmental Quality (TCEQ) to extend public comment periods and makes changes to contested case hearing requirements. It would also change requirements for responding to public comments and place restrictions on the types of issues that can be referred to hearing by the TCEQ.

The changes proposed by the bill are not expected to require significant additional resources to implement.

Local Government Impact

No significant fiscal implication to units of local government is anticipated. Local governments could experience increased public notification costs. However, these costs are not expected to be significant.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JK, CL, TL

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

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LBB Staff: JK, CL, TL

2

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

April 7, 2003

TO: Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

FROM: John Keel, Director, Legislative Budget Board

IN RE: HB2877 by Bonnen (Relating to the permitting procedures of the Texas Commission on Environmental Quality.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would revise the public participation procedures applicable to environmental permit applications where there is an opportunity to request a contested case hearing. The Executive Director (ED) of the Texas Commission on Environmental Quality (ED) would be required to respond only to comments received in writing, in contrast to the current process that requires a response to spoken comments received at public meetings.

The bill would impose stricter time frames for the filing of hearing requests. As opposed to the current process that allows for hearing requests to be considered timely at any point after the application is filed, a hearing request would not be timely unless it was filed during the prescribed period following transmittal of the ED's response to comments. The bill also would revise the time frame for filing requests for reconsideration to allow for filing after the publication of the ED's preliminary decision.

New criteria would also be imposed on persons requesting a hearing with the State Office of Administrative Hearings (SOAH). Only persons who submitted timely written comments could request a hearing, and their hearing request could only relate to the issues they raised during the comment period and could not relate to issues that may have been raised by others. The bill also revised the criteria for issues that must be contained in a valid hearing request. Under the bill the issues would have to be supported by competent evidence showing a reasonable basis for a factual dispute. The issue would have to be discrete and not a broad or general objection.

The bill would also impose requirements for air applications. A person challenging issuance of an air permit would be required to file a "request for initiation of the public participation process" in response to the first notice of the application, rather than a request for hearing.

The bill could result in some increased administrative costs to the TCEQ. However, such costs are not expected to be significant. There could be fewer cases referred to the SOAH as a result of the bill's passage. However, such savings are not expected to be significant.

3

Local Government Impact

No significant fiscal implications are anticipated for local governments.

Local governments which have equipment going through the permitting process may experience increased costs due to additional public notice criteria. However, such costs are not expected to be significant.

Source Agencies: 360 State Office of Administrative Hearings, 582 Commission on Environmental Quality

LBB Staff: JK, CL, TL

4

By: Bonnen, et al. (Senate Sponsor - Armbrister) H.B. No. 2877
(In the Senate - Received from the House May 6, 2003;
May 8, 2003, read first time and referred to Committee on Natural
Resources; May 23, 2003, reported adversely, with favorable
Committee Substitute by the following vote: Yeas 8, Nays 1;
May 23, 2003, sent to printer.)

COMMITTEE SUBSTITUTE FOR H.B. No. 2877

By: Armbrister

A BILL TO BE ENTITLED
AN ACT

relating to certain permitting procedures of the Texas Commission
on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 5.555, Water Code, is
amended to read as follows:

(a) The executive director, in accordance with procedures
provided by commission rule, shall file with the chief clerk of the
commission a response to each relevant and material public comment
on the preliminary decision filed in writing during the public
comment period.

SECTION 2. Section 5.556, Water Code, is amended by
amending Subsections (a), (c), and (d) and adding Subsections (g)
and (h) to read as follows:

(a) A person may request that the commission reconsider the
executive director's decision or hold a contested case hearing. A
request for reconsideration of the executive director's decision or
for a contested case hearing must be filed with the commission after
transmittal of the executive director's response to public comments
and during the period provided by commission rule.

(c) The commission may not grant a request for a contested
case hearing unless the commission determines that the request was
filed by an affected person, as defined by Section 5.115, who
submitted written comments during the public comment period or by a
local government with authority under state law over the issues
contemplated by the application upon a showing of good cause for not
having submitted written comments during the comment period.

(d) The commission may not refer an issue to the State
Office of Administrative Hearings for a hearing unless the
commission determines that ~~the issue~~:

(1) the issue involves a disputed question of fact;

(2) the hearing request is based on information in the
record establishing a reasonable basis for the factual dispute and
describes how the executive director's response to comments failed
to resolve the dispute;

(3) the issue is a specific, identifiable, technical
dispute regarding the application or draft permit rather than an
expression of generalized public health or environmental concerns
or objections;

(4) the issue was raised during the public comment
period by the person requesting the hearing; and

(5) the issue ~~[-3-]~~ is relevant and material to the
decision on the application.

(g) Notwithstanding other law, public notice of a contested
case hearing that the commission grants under this section is not
required. Notice of a hearing shall be provided to the applicant,
the office of public interest counsel, the executive director, and
the person whose hearing requests have been granted.

(h) Notwithstanding other law, an application to upgrade a
permitted landfill facility to meet the requirements of 40 C.F.R.
Part 258 submitted to the commission before April 30, 2003, shall be
considered by the commission as a modification as defined by
commission rules.

SECTION 3. Section 7.0025, Water Code, is amended to read as
follows:

2-1 Sec. 7.0025. INITIATION OF ENFORCEMENT ACTION USING
 2-2 INFORMATION PROVIDED BY PRIVATE INDIVIDUAL. (a) In this section,
 2-3 "relevant commission protocols" means protocols that are used by
 2-4 the commission or determined to be acceptable by the executive
 2-5 director.

2-6 (b) The commission may initiate an enforcement action on a
 2-7 matter under its jurisdiction under this code or the Health and
 2-8 Safety Code based on a combination of information the commission
 2-9 [it] receives from a private individual and information developed
 2-10 by the commission if that combined information, in the commission's
 2-11 judgment, is of sufficient value and credibility to warrant the
 2-12 initiation of an enforcement action.

2-13 (c) ~~[(b)]~~ The executive director or the executive
 2-14 director's designated representative may evaluate the value and
 2-15 credibility of information received from a private individual and
 2-16 the merits of any proposed enforcement action based on that
 2-17 information. In evaluating information under this subsection, the
 2-18 executive director or the executive director's designated
 2-19 representative shall consider the following criteria:

2-20 (1) the individual providing the information must be
 2-21 willing to:

2-22 (A) submit a sworn affidavit attesting to the
 2-23 facts that constitute the alleged violation and authenticating any
 2-24 writings, recordings, or photographs provided by the individual;
 2-25 and

2-26 (B) testify in any enforcement proceedings
 2-27 regarding the alleged violation; and

2-28 (2) if the executive director relies on any physical
 2-29 or sampling data submitted by an individual to prove one or more
 2-30 elements of an enforcement case:

2-31 (A) the data must have been collected or gathered
 2-32 in accordance with relevant commission protocols; and

2-33 (B) the individual submitting the physical or
 2-34 sampling data must submit a sworn affidavit that the individual
 2-35 followed relevant commission protocols when collecting the data.

2-36 (d) ~~[(c)]~~ The commission by rule may adopt additional
 2-37 criteria for the executive director to use in evaluating the value
 2-38 and credibility of information received from a private individual
 2-39 and for use of that information in an enforcement action.

2-40 (e) ~~[(d)]~~ A private individual who submits information on
 2-41 which the commission relies for all or part of an enforcement case
 2-42 may be called to testify in the enforcement proceedings and is
 2-43 subject to all sanctions under law for knowingly falsifying
 2-44 evidence. If the commission relies on the information submitted by
 2-45 a private individual to prove an enforcement case, any physical or
 2-46 sampling data must have been collected or gathered in accordance
 2-47 with commission protocols. The commission is not required to call a
 2-48 private individual who provides information on which the commission
 2-49 relies unless doing so is essential to the enforcement action.

2-50 (f) The commission may not use information provided by a
 2-51 private individual if the information was obtained by trespass or
 2-52 another illegal act.

2-53 (g) Information provided by a private individual that is
 2-54 used in an enforcement action is subject to the rules of evidence.

2-55 SECTION 4. Subchapter C, Chapter 361, Health and Safety
 2-56 Code, is amended by adding Section 361.1145 to read as follows:

2-57 Sec. 361.1145. PROHIBITION OF PERMIT FOR CERTAIN
 2-58 SOLIDIFIED, COMMERCIAL INDUSTRIAL SOLID WASTE FACILITIES. The
 2-59 commission may not issue a permit for the storage, processing, or
 2-60 disposal of solidified, commercial, industrial solid waste in a
 2-61 solution-mined salt dome cavern or a sulphur mine located within
 2-62 one mile of a drinking water well, school, place of worship, or
 2-63 public park.

2-64 SECTION 5. Section 382.056, Health and Safety Code, is
 2-65 amended by amending Subsections (b), (g), (h), (i), (l), (m), and
 2-66 (n) and adding Subsections (s) and (t) to read as follows:

2-67 (b) The notice must include:
 2-68 (1) a description of the location or proposed location
 2-69 of the facility or federal source;

(2) the location at which a copy of the application is available for review and copying as provided by Subsection (d);

(3) a description, including a telephone number, of the manner in which the commission may be contacted for further information;

(4) a description, including a telephone number, of the manner in which the applicant may be contacted for further information;

(5) a description of the applicable procedural rights and obligations of the public, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice~~[, that includes a statement that a person who may be affected by emissions of air contaminants from the facility, proposed facility, or federal source is entitled to request a hearing from the commission];~~

(6) a statement that a person who may be affected by emissions of air contaminants from the facility, proposed facility, or federal source is entitled to file a notice of contest;

(7) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(8) ~~[(7)]~~ the time and location of any public meeting to be held under Subsection (e); and

(9) ~~[(8)]~~ any other information the commission by rule requires.

(g) If, in response to the notice published under Subsection (a) for a permit or permit amendment under Section 382.0518 or a permit renewal review under Section 382.055, a person files a notice of contest ~~[requests]~~ during the period provided by commission rule ~~[that the commission hold a public hearing]~~ and the notice of contest ~~[request]~~ is not withdrawn before the date the preliminary decision is issued, the applicant shall publish notice of the preliminary decision in a newspaper, and the commission shall seek public comment on the preliminary decision in accordance with~~[-. The commission shall consider the request for public hearing under]~~ the procedures provided by Subsections (i)-(n). However, the ~~[The]~~ commission may not seek further public comment or hold a public hearing ~~[under the procedures provided by Subsections (i)-(n)]~~ in response to a notice of contest ~~[request for a public hearing]~~ on an amendment, modification, or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted.

(h) The commission shall consider any hearing request regarding ~~[if, in response to the notice published under Subsection (a) for]~~ a permit under Section 382.054~~[-, a person requests during the public comment period provided by commission rule that the commission hold a public hearing, the commission shall consider the request]~~ under the procedures provided by Section 382.0561 and not under the procedures provided by Subsections (i)-(n).

(i) The commission by rule shall establish the form and content of the notice of preliminary decision under Subsection (g), the manner of publication, and the duration of the public comment period. The notice must include:

(1) the information required by Subsections ~~[Subsection]~~ (b) (1)-(5) and (7)-(9);

(2) a summary of the preliminary decision;

(3) the location at which a copy of the preliminary decision is available for review and copying as provided by Subsection (j);

(4) a description of the manner in which comments regarding the preliminary decision may be submitted; and

(5) any other information the commission by rule requires.

(1) The executive director, in accordance with procedures adopted by the commission by rule, shall file with the chief clerk of the commission a response to each relevant and material public comment on the preliminary decision filed in writing during the public comment period.

(m) The chief clerk of the commission shall transmit the executive director's decision, the executive director's response to public comments, and instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing to:

- (1) the applicant;
- (2) any person who submitted comments during the public comment period;
- (3) any person who requested to be on the mailing list for the permit action; and
- (4) any person who timely filed a notice of contest [~~request for a public hearing~~] in response to the notice published under Subsection (a).

(n) Except as provided by Section 382.0561, the commission shall consider a request that the commission reconsider the executive director's decision or hold a contested case [~~public~~] hearing in accordance with the procedures provided by Sections 5.556 and 5.557, Water Code.

(s) If a notice of contest is not filed or is withdrawn under Subsection (g), any public hearing requested in response to a later public notice required solely by federal program requirements, if granted, shall be conducted in accordance with Section 382.0561 and not under Chapter 2001, Government Code.

(t) The commission shall extend the public comment period automatically until the close of the public meetings held under Subsection (k). The commission may not extend the period during which a notice of contest or request for reconsideration may be filed.

SECTION 6. Section 382.0564, Health and Safety Code, is amended to read as follows:

Sec. 382.0564. NOTIFICATION TO OTHER GOVERNMENTAL ENTITIES. (a) The commission by rule may allow for notification of and review by the administrator and affected states of permit applications, revisions, renewals, or draft permits prepared under Sections 382.054-382.0543.

(b) The commission shall mail notice of intent to obtain a permit, permit amendment, or other authorization for a rock-crushing facility associated with blasting operations to an affected municipality.

(c) An affected municipality entitled to notice under Subsection (b) may submit comments to the commission within 30 days of receiving a notice of intent under Subsection (b).

(d) The commission may not issue a permit, permit amendment, or other authorization for a rock-crushing facility associated with blasting operations if the commission receives from an affected municipality a resolution in opposition to issuance of the permit, permit amendment, or other authorization during the 30-day comment period.

(e) The commission shall prohibit a currently permitted rock-crushing facility from being associated with blasting operations if:

(1) blasting operations have not taken place on the tract for 10 or more years before April 10, 2003; and

(2) the commission receives from an affected municipality a resolution in opposition to the currently permitted rock-crushing facility.

(f) For purposes of this section, an "affected municipality" means a municipality whose primary source of drinking water is an aquifer made, wholly or partly, of water-bearing limestone or dolomite which is located in a county:

(1) that is adjacent to a county with a population of 500,000 or more; and

(2) in which is located a portion of a body of water into which a discharge of pollutants is prohibited by the commission under 30 T.A.C. Chapter 311.

SECTION 7. Section 2003.047, Government Code, is amended by adding Subsections (p) and (q) to read as follows:

(p) In designating parties to a hearing on a permit application, the administrative law judge may name as parties only

the executive director of the commission, the office of public interest counsel, the permit applicant, and other persons whose hearing requests have been granted by the commission and whose issues have been referred by the commission for a contested case hearing. The executive director may participate in a contested case hearing only to the extent described in Section 5.228, Water Code.

(g) An administrative law judge may grant a motion for a summary disposition on any or all of the issues referred for hearing and issue a proposal for decision that resolves the contested case without an evidentiary hearing or with a limited evidentiary hearing as provided by commission rules.

SECTION 8. Subchapter B, Chapter 11, Water Code, is amended by adding Sections 11.0235, 11.0236, and 11.0237 to read as follows:

Sec. 11.0235. POLICY REGARDING WATERS OF THE STATE.

(a) The waters of the state are held in trust for the public, and the right to use state water may be appropriated only as expressly authorized by law.

(b) Maintaining the biological soundness of the state's rivers, lakes, bays, and estuaries is of great importance to the public's economic health and general well-being.

(c) The legislature has expressly required the commission while balancing all other interests to consider and provide for the freshwater inflows necessary to maintain the viability of the state's bay and estuary systems in the commission's regular granting of permits for the use of state waters.

(d) The legislature has not expressly authorized granting water rights exclusively for:

(1) instream flows dedicated to environmental needs or inflows to the state's bay and estuary systems; or

(2) other similar beneficial uses.

(e) The fact that greater pressures and demands are being placed on the water resources of the state makes it of paramount importance to reexamine the process for ensuring that these important priorities are effectively addressed in clear delegations of authority to the commission.

Sec. 11.0236. STUDY COMMISSION ON WATER FOR ENVIRONMENTAL FLOWS. (a) In recognition of the importance that the ecological soundness of our riverine, bay, and estuary systems and riparian lands has on the economy, health, and well-being of the state there is created the Study Commission on Water for Environmental Flows.

(b) The study commission is composed of 15 members as follows:

(1) two members appointed by the governor;
 (2) five members appointed by the lieutenant governor;
 (3) five members appointed by the speaker of the house of representatives;

(4) the presiding officer of the commission or the presiding officer's designee;

(5) the chairman of the board or the chairman's designee; and

(6) the presiding officer of the Parks and Wildlife Commission or the presiding officer's designee.

(c) Of the members appointed under Subsection (b)(2):

(1) one member must represent a river authority or municipal water supply agency or authority;

(2) one member must represent an entity that is distinguished by its efforts in resource protection; and

(3) three members must be members of the senate.

(d) Of the members appointed under Subsection (b)(3):

(1) one member must represent a river authority or municipal water supply agency or authority;

(2) one member must represent an entity that is distinguished by its efforts in resource protection; and

(3) three members must be members of the house of representatives.

(e) Each appointed member of the study commission serves at the will of the person who appointed the member.

(f) The appointed senator with the most seniority and the appointed house member with the most seniority serve together as co-presiding officers of the study commission.

(g) A member of the study commission is not entitled to receive compensation for service on the study commission but is entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the study commission, as provided by the General Appropriations Act.

(h) The study commission may accept gifts and grants from any source to be used to carry out a function of the study commission.

(i) The commission shall provide staff support for the study commission.

(j) The study commission shall conduct public hearings and study public policy implications for balancing the demands on the water resources of the state resulting from a growing population with the requirements of the riverine, bay, and estuary systems including granting permits for instream flows dedicated to environmental needs or bay and estuary inflows, use of the Texas Water Trust, and any other issues that the study commission determines have importance and relevance to the protection of environmental flows. In evaluating the options for providing adequate environmental flows, the study commission shall take notice of the strong public policy imperative that exists in this state recognizing that environmental flows are important to the biological health of our parks, game preserves, and bay and estuary systems and are high priorities in the permitting process. The study commission shall specifically address ways that the ecological soundness of these systems will be ensured in the water allocation process.

(k) The study commission:

(1) shall appoint an advisory scientific committee that will:

(A) serve as impartial scientific advisors and reviewers for the study commission; and

(B) have a membership of no fewer than five and no more than nine total members chosen by the study commission to represent a variety of areas of relevant technical expertise;

(2) may appoint additional advisory committees to assist the study commission; and

(3) may draft proposed legislation to modify existing water-rights permitting statutes.

(1) Not later than December 1, 2004, the study commission shall issue a report summarizing:

(1) any hearings conducted by the study commission;

(2) any studies conducted by the study commission;

(3) any legislation proposed by the study commission;

and

(4) any other findings and recommendations of the study commission.

(m) The study commission shall promptly deliver copies of the report to the governor, lieutenant governor, and speaker of the house of representatives.

(n) The study commission shall adopt rules to administer this section.

(o) The study commission is abolished and this section expires September 1, 2005.

Sec. 11.0237. WATER RIGHTS FOR INSTREAM FLOWS DEDICATED TO ENVIRONMENTAL NEEDS OR BAY AND ESTUARY INFLOWS. (a) The commission may not issue a new permit for instream flows dedicated to environmental needs or bay and estuary inflows. This section does not prohibit the commission from issuing an amendment to an existing permit or certificate of adjudication to change the use to or add a use for instream flows dedicated to environmental needs or bay and estuary inflows.

(b) This section does not alter the commission's obligations under Section 11.042(b), 11.046(b), 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1491, 16.058, or 16.059.

(c) This section expires September 1, 2005.

7-1 SECTION 9. Subsections (d) and (e), Section 11.147, Water
7-2 Code, are amended to read as follows:

7-3 (d) In its consideration of an application to store, take,
7-4 or divert water, the commission shall include in the permit, to the
7-5 extent practicable when considering all public interests, those
7-6 conditions considered by the commission necessary to maintain
7-7 ~~[consider the effect, if any, of the issuance of the permit on]~~
7-8 existing instream uses and water quality of the stream or river to
7-9 which the application applies.

7-10 (e) The commission shall include in the permit, to the
7-11 extent practicable when considering all public interests, those
7-12 conditions considered by the commission necessary to maintain ~~[also~~
7-13 ~~consider the effect, if any, of the issuance of the permit on]~~ fish
7-14 and wildlife habitats.

7-15 SECTION 10. Rules adopted by the Texas Commission on
7-16 Environmental Quality under Section 26.040, Water Code, before the
7-17 effective date of this Act are validated as of the dates they were
7-18 adopted and remain valid until they are modified or repealed by the
7-19 commission.

7-20 SECTION 11. (a) Except as provided by Subsection (b) of
7-21 this section, this Act takes effect September 1, 2003.

7-22 (b) Sections 8 and 9 of this Act take effect immediately if
7-23 this Act receives a vote of two-thirds of all the members elected to
7-24 each house, as provided by Section 39, Article III, Texas
7-25 Constitution. If this Act does not receive the vote necessary for
7-26 immediate effect, Sections 8 and 9 of this Act take effect September
7-27 1, 2003.

7-28 (c) The changes in law made by Sections 1, 2, 4, 5, and 7 of
7-29 this Act apply only to an application for a permit, permit
7-30 amendment, or permit renewal for which the notice of preliminary
7-31 decision required by Section 5.553, Water Code, or Section
7-32 382.056(g), Health and Safety Code, is published on or after
7-33 September 1, 2003. A permit, permit amendment, or permit renewal
7-34 for which the notice of preliminary decision required by Section
7-35 5.553, Water Code, or Section 382.056(g), Health and Safety Code,
7-36 is published before September 1, 2003, is governed by the law in
7-37 effect on the date it was published, and that law is continued in
7-38 effect for that purpose.

7-39 (d) The changes in law made by Sections 8 and 9 of this Act
7-40 apply to a permit application pending before the Texas Commission
7-41 on Environmental Quality on the effective date of those sections or
7-42 filed with the commission on or after that date.

7-43 * * * * *

FAVORABLY AS SUBSTITUTED
SENATE COMMITTEE REPORT ON

SB SCR SJR SR

(HB)

HCR

HJR

2877

By

Bonnie ARMSTRISTER

(Author/Senate Sponsor)

5/23/03

(date)

We, your Committee on NATURAL RESOURCES, to which was referred the attached measure,
have on 5/20/03, had the same under consideration and I am instructed to report it
(date of hearing)
back with the recommendation (s) that it:

- ☒ do pass as substituted, and be printed
☒ the caption remained the same as original measure
☐ the caption changed with adoption of the substitute
☐ do pass as substituted, and be ordered not printed
☐ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☒ yes ☐ no

A revised fiscal note was requested. ☒ yes ☐ no

An actuarial analysis was requested. ☐ yes ☒ no

Considered by subcommittee. ☐ yes ☒ no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator Armbrister, Chair	<input checked="" type="checkbox"/>			
Senator Jackson, Vice-Chair	<input checked="" type="checkbox"/>			
Senator Barrientos		<input checked="" type="checkbox"/>		
Senator Duncan			<input checked="" type="checkbox"/>	
Senator Estes	<input checked="" type="checkbox"/>			
Senator Fraser	<input checked="" type="checkbox"/>			
Senator Hinojosa			<input checked="" type="checkbox"/>	
Senator Lindsay	<input checked="" type="checkbox"/>			
Senator Lucio	<input checked="" type="checkbox"/>			
Senator Shapiro	<input checked="" type="checkbox"/>			
Senator Staples	<input checked="" type="checkbox"/>			
TOTAL VOTES	8	1	2	0

COMMITTEE ACTION

- ☒ S260 Considered in public hearing
☒ S270 Testimony taken

Kathy C. Millett
COMMITTEE CLERK

Ken Armbrister
CHAIRMAN

Paper clip the original and one copy of this signed form to the original bill along with TWO copies of the Committee Substitute
Retain one copy of this form for Committee files

WITNESS LIST

HB 2877

SENATE COMMITTEE REPORT

Natural Resources

May 15, 2003 - 10:00AM

AGAINST: Lowerre, Richard Attorney (Comm.David Rosse, Kleberg Co., The City of Del Rio),
Austin, TX

Registering, but not testifying:

FOR: Fisher, Jon Sr. VP (Texas Chemical Council), Austin, TX
Miksa, Mary Sr. VP Governmental Affairs (Texas Association of Business), Austin,
TX
Morriss, James Attorney (Lone Star Steel Company/Huntsman Polymers Corporation),
Austin, TX
Smith, Tom "Smitty" Director (Public Citizen), Austin, TX

AGAINST: Kramer, Ken Director (Lone Star Chapter, Sierra Club), Austin, TX

BILL ANALYSIS

Senate Research Center

C.S.H.B. 2877
By: Bonnen (Armbrister)
Natural Resources
5/22/2003
Committee Report (Substituted)

DIGEST AND PURPOSE

C.S.H.B. 2877 provides that the Texas Commission on Environmental Quality, in considering a permit, only has to respond to written comments during the notice and comment process; clarifies the times that a request for reconsideration of the executive director's decision and a request for a contested case hearing are made; clarifies that the only person who can request a contested case is a person who has participated in the full process to that point and is an affected person; tightens the requirements for issues that are referred to a contested case in response to practices that seem to currently allow broad issues to be referred; clarifies the process in the air permitting statutes that currently allows an early request for hearing to stand as a request for contested case hearing; and limits who can be named parties to a hearing at the state office of hearing examiners. C.S.H.B. 2877 also establishes a 15-member study commission on water for environmental flows

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Study Commission on Water for Environmental Flows in SECTION 8 (Section 11.0236, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 5.555(a), Water Code, to require the executive director, in accordance with procedures provided by the Texas Commission on Environmental Quality (TCEQ) rule, to file with the chief clerk of TCEQ a response to each relevant and material public comment on the preliminary decision filed in writing during the public comment period.

SECTION 2. Amends Section 5.556, Water Code, by amending Subsections (a), (c), and (d), and adding Subsections (g) and (h), as follows:

(a) Requires a request for reconsideration of the executive director's decision or for a contested case hearing to be filed with TCEQ after transmittal of the executive director's response to public comments and during the period provided by TCEQ rule. Requires a request for a contested case hearing to be filed with TCEQ after transmittal of the executive director's response to public comments during the period provided by TCEQ rule.

(c) Prohibits TCEQ from granting a request for a contested case hearing unless TCEQ determines that the request was filed by an affected person, as defined by Section 5.115, who submitted written comments during the public comment period or by a local government with authority under state law over the issues contemplated by the application upon a showing of good cause for not having submitted written comments during the comment period.

(d) Prohibits TCEQ from referring an issue to the state office of administrative hearings for a hearing, unless TCEQ determines certain facts.

(g) Provides that notwithstanding other law, public notice of a contested case hearing that TCEQ grants under this section is not required. Requires that notice of a hearing be provided to the applicant, the office of public interest counsel, the executive director, and

the person whose hearing requests have been granted.

(h) Provides that notwithstanding other law, an application to upgrade a permitted landfill facility to meet the requirements of 40 C.F.R. Part 258 submitted to TCEQ before April 30, 2003, is required to be considered by TCEQ as a modification as such is defined by TCEQ rules.

SECTION 3. Amends Section 7.0025, Water Code, as follows:

(a) Defines “relevant commission protocols.”

(b) Authorizes TCEQ to initiate an enforcement action on a matter under its jurisdiction under this code or the Health and Safety Code based on a combination of information TCEQ receives from a private individual and information developed by TCEQ if that combined information, in TCEQ’s judgment, is of sufficient value and credibility to warrant the initiation of an enforcement action.

(c) Requires the executive director or the executive director’s designated representative to consider certain criteria.

(d) Authorizes the TCEQ to adopt additional criteria for the executive director to use in evaluating the value and credibility of information received from a private individual and for use of that information in an enforcement action.

(e) Provides that TCEQ is not required to call a private individual who provides information on which TCEQ relies unless doing so is essential to the enforcement action.

(f) Prohibits TCEQ from using information provided by a private individual if the information was obtained by trespass or another illegal act.

(g) Provides that information provided by a private individual that is used in an enforcement action is subject to the rules of evidence.

SECTION 4. Amends Subchapter C, Chapter 361, Health and Safety Code, by adding Section 361.1145, as follows:

Sec. 361.1145. PROHIBITION OF PERMIT FOR CERTAIN SOLIDIFIED, COMMERCIAL INDUSTRIAL SOLID WASTE FACILITIES. Prohibits TCEQ from issuing a permit for the storage, processing, or disposal of solidified, commercial, industrial solid waste in a solution-mined salt dome cavern or a sulphur mine located within one mile of a drinking water well, school, place of worship, or public park.

SECTION 5. Amends Section 382.056, Health and Safety Code, by amending Subsections (b), (g), (h), (i), (l), (m), and (n), and adding Subsections (s) and (t), as follows:

(b) Requires the notice to include certain information.

(g) Requires the applicant to publish notice of the preliminary decision in a newspaper, and requires TCEQ to seek public comment on the preliminary decision in accordance with the procedures provided by Subsections (i)-(n), if, in response to the notice published under Subsection (a) for a permit or permit amendment under Section 382.0518 or a permit renewal review under Section 382.055, a person files a request during the period provided by TCEQ rule that TCEQ initiate the public participation process, rather than holding a public hearing, and the request is not withdrawn before the date the preliminary decision is issued. Prohibits, however, TCEQ from seeking further public comment or holding a public hearing in response to a request for initiation of the public participation process, rather than hearing on an amendment, modification, or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. Deletes text regarding a hearing

under the procedures provided by Subsections (i)-(n).

(h) Makes conforming changes.

(i) Requires TCEQ by rule to establish the form and content of the notice of preliminary decision under Subsection (g), the manner of publication, and the duration of the public comment period. Requires the notice to include certain information.

(l) Makes a conforming change.

(m) Makes conforming changes.

(n) Requires TCEQ, except as provided by Section 382.0561, to consider a request that TCEQ reconsider the executive director's decision or hold a contested case hearing, rather than a public hearing, in accordance with the procedures provided by Sections 5.556 and 5.557, Water Code.

(s) Requires TCEQ, if a request to initiate the public participation process is not filed during the period prescribed by TCEQ rule for a permit or permit amendment under Section 382.0518 or for a permit renewal review under Section 382.055, to conduct a public hearing held in response to a later public notice required solely by federal program requirements in accordance with Section 382.0561 and not under Chapter 2001, Government Code.

(t) Requires TCEQ to extend the public comment period automatically until the close of the public meetings held under Subsection (k). Prohibits TCEQ from extending the period during which requests for initiation of the public participation process or requests for reconsideration may be filed.

SECTION 6. Amends Section 382.0564, Health and Safety Code, as follows:

(a) Subsection created from existing text.

(b) Requires TCEQ to mail notice of intent to obtain a permit, permit amendment, or other authorization for a rock-crushing facility associated with blasting operations to an affected municipality.

(c) Authorizes an affected municipality entitled to notice under subsection (b) to submit comments to the TCEQ within 30 days of receiving a notice of intent under Subsection (b).

(d) Prohibits TCEQ from issuing a permit, permit amendment, or other authorization for a rock-crushing facility associated with blasting operations if TCEQ receives from an affected municipality a resolution in opposition to issuance of the permit, permit amendment, or other authorization during the 30 day comment period.

(e) Requires TCEQ to prohibit a currently permitted rock-crushing facility from being associated with blasting operations if blasting operations have not taken place on the tract for 10 or more years before April 10, 2003; and TCEQ receives from an affected municipality a resolution in opposition to the currently permitted rock-crushing facility.

(f) Defines "affected municipality."

SECTION 7. Amends Section 2003.047, Government Code, by adding Subsections (p) and (q), as follows:

(p) Authorizes the administrative law judge, in designating parties to a hearing on a permit application, to name as parties only the executive director, the office of public interest counsel, the permit applicant, and other persons whose hearing requests have

been granted by TCEQ and whose issues have been referred by TCEQ for a contested case hearing. Authorizes the executive director to participate in a contested case hearing only to the extent described in Section 5.228, Water Code.

(q) Authorizes an administrative law judge to make a summary disposition of the issues referred by TCEQ as provided by TCEQ rules.

SECTION 8. Amends Subchapter B, Chapter 11, Water Code, by adding Section 11.0235, 11.0236, and 11.0237, as follows:

Sec. 11.0235. POLICY REGARDING WATERS OF THE STATE. (a) Provides that the waters of the state are held in trust for the public, and the right to use state water may be appropriated only as expressly authorized by law.

(b) Provides that maintaining the biological soundness of the state's rivers, lakes, bays, and estuaries is of great importance to the public's economic health and general well-being.

(c) Provides that the legislature has expressly required TCEQ while balancing all other interests to consider and provide for the freshwater inflows necessary to maintain the viability of the state's bay and estuary systems in TCEQ's regular granting of permits for the use of state waters.

(d) Provides that the legislature has not expressly authorized granting water rights exclusively for instream flows dedicated to environmental needs or inflows to the state's bay and estuary systems; or other similar beneficial uses.

(e) Provides that the fact that greater pressures and demands are being placed on the water resources of the state makes it of paramount importance to reexamine the process for ensuring that these important priorities are effectively addressed in clear delegations of authority to TCEQ.

Sec. 11.0236. STUDY COMMISSION ON WATER FOR ENVIRONMENTAL FLOWS. (a) Provides that in recognition of the importance that the ecological soundness of our riverine, bay and estuary systems and riparian lands has on the economy, health, and well-being of the state there is created the Study Commission on Water for Environmental Flows.

(b) Provides that the Study Commission on Water for Environmental Flows (study commission) is composed of 15 certain members.

(c) Sets forth the composition of the members appointed under Subsection (b)(2).

(d) Sets forth the composition of the members appointed under Subsection (b)(3).

(e) Provides that each appointed member of the study commission serves at the will of the person who appointed the member.

(f) Provides that the appointed senator with the most seniority and the appointed house member with the most seniority serve together as co-presiding officers of the study commission.

(g) Provides that a member of the study commission is not entitled to receive compensation for service on the study commission but is entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the study commission, as provided by the General Appropriations Act.

(h) Authorizes the study commission to accept gifts and grants from any source to

be used to carry out a function of the study commission.

- (i) Requires TCEQ to provide staff support for the study commission.
- (j) Requires the study commission to conduct public hearings and study public policy implications for balancing the demands on the water resources of the state resulting from a growing population with the requirements of the riverine, bay, and estuary systems including granting permits for instream flows dedicated to environmental needs or bay and estuary inflows, use of the Texas Water Trends, and any other issues the study commission determines have importance and relevance to the protection of environmental flows. Requires the study commission, in evaluating the options for providing adequate environmental flows, to take notice of the strong public policy imperative that exists in this state recognizing that environmental flows are important to the biological health of our parks, game preserves, and bay and estuary systems and are high priorities in the permitting process. Requires the study commission to specifically address ways that the ecological soundness of these systems will be ensured in the water allocation process.
- (k) Requires the study commission to perform certain tasks.
- (l) Requires the study commission, not later than December 1, 2004, to issue a report summarizing certain items.
- (m) Requires the study commission to promptly deliver copies of the report the governor, lieutenant governor, and speaker of the house of representatives.
- (n) Requires the study commission to adopt rules to administer this section.
- (o) Provides that the study commission is abolished and that this section expires September 1, 2005.

Sec. 11.0237. WATER RIGHTS FOR INSTREAM FLOWS DEDICATED TO ENVIRONMENTAL NEEDS OR BAY AND ESTUARY INFLOWS. (a) Prohibits TCEQ from issuing a new permit for instream flows dedicated to environmental needs or bay and estuary inflows. Provides that this section does not prohibit TCEQ from issuing an amendment to an existing permit or certificate of adjudication to change the use to or add a use for instream flows dedicated to environmental needs or bay and estuary inflows.

- (b) Provides that this section does not alter TCEQ's obligations under Section 11.042(b), 11.046(b), 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1491, 16.058, or 16.059.
- (c) Provides that this section expires September 1, 2005.

SECTION 9. Amends Sections 11.147(d) and (e), Water Code, as follows:

- (d) Requires TCEQ, in its consideration of an application to store, take, or divert water, to include in the permit, to the extent practicable when considering all public interests, those conditions considered by TCEQ necessary to maintain, rather than consider the effect, if any, of the issuance of the permit on, existing instream uses and water quality of the stream or river to which the application applies.
- (e) Requires TCEQ to include in the permit, to the extent practicable when considering all public interests, those conditions considered by TCEQ necessary to maintain, rather than consider the effect, if any, of the issuance of the permit on, fish and wildlife habitats.

SECTION 10. Provides that rules adopted by TCEQ under Section 26.040, Water Code, before

the effective date of this Act are validated as of the dates they were adopted and remain valid until they are modified or repealed by TCEQ.

SECTION 11. (a) Provides that except as provided by subsection (b) of this section, this Act takes effect September 1, 2003.

(b) Provides that Sections 8 and 9 of this Act take effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. Provides that if this Act does not receive the vote necessary for immediate effect, Sections 8 and 9 of this Act take effect September 1, 2003.

(c) Provides that the changes in law made by Sections 1, 2, 4, 5, and 7 of this Act apply only to an application for a permit, permit amendment, or permit renewal for which the notice of preliminary decision required by Section 5.553, Water Code, or Section 382.056(g), Health and Safety Code, is published on or after September 1, 2003. Provides that a permit, permit amendment, or permit renewal for which the notice of preliminary decision required by Section 5.533, Water Code, or Section 382.056(g), Health and Safety Code, is published before September 1, 2003, is governed by the law in effect on the date it was published, and that law is continued in effect for that purpose.

(d) Provides that the changes in law made by Sections 8 and 9 of this Act apply to a permit application pending before TCEQ on the effective date of those sections or filed with TCEQ on or after that date.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

May 23, 2003

TO: Honorable Kenneth Armbrister, Chair, Senate Committee on Natural Resources

FROM: John Keel, Director, Legislative Budget Board

IN RE: **HB2877** by Bonnen (Relating to certain permitting procedures of the Texas Commission on Environmental Quality.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2877. Committee Report 2nd House, Substituted: a negative impact of (\$30,000) through the biennium ending August 31, 2005.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2004	(\$15,000)
2005	(\$15,000)
2006	\$0
2007	\$0
2008	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>GENERAL REVENUE FUND</i> 1	Change in Number of State Employees from FY 2003
2004	(\$15,000)	0.3
2005	(\$15,000)	0.3
2006	\$0	0.0
2007	\$0	0.0
2008	\$0	0.0

Fiscal Analysis

The bill would revise the public participation procedures applicable to environmental permit applications where there is an opportunity to request a contested case hearing at the Texas Commission on Environmental Quality (TCEQ). The executive director of the TCEQ would be required to respond only to comments received in writing, in contrast to the current process that requires a response to spoken comments received at public meetings.

The bill would impose stricter time frames for the filing of hearing requests. As opposed to the current process that allows for hearing requests to be considered timely at any point after the application is filed, a hearing request would not be timely unless it was filed during the prescribed period following transmittal of the executive director's response to comments. The bill also would revise the time frame for filing requests for reconsideration to allow for filing after the

publication of the executive director's preliminary decision.

New criteria would also be imposed on persons requesting a hearing. Only persons who submitted timely written comments could request a hearing, and their hearing request could only relate to the issues they raised during the comment period and could not relate to issues that may have been raised by others. The bill also revised the criteria for issues that must be contained in a valid hearing request. Under the bill the issues would have to be supported by competent evidence showing a reasonable basis for a factual dispute.

The bill would impose requirements for air applications. A person challenging issuance of an air permit would be required to file a "request for initiation of the public participation process" in response to the first notice of the application, rather than a request for hearing as under current law. As with the permits for other media, the person would also need to file a hearing request following transmittal of the response to comments.

The bill contains provisions relating to rock crushers with blasting operations. The TCEQ would be required to prohibit rock crushers from blasting operations if an affected municipality adopts a resolution in opposition to the facility.

The bill would create the Study Commission on Environmental Flows as a 15-member commission. The TCEQ would provide staff to the commission. The bill also would suspend the processing of instream permit applications.

Methodology

The TCEQ would be required to implement rules and procedures. These costs are not expected to be significant.

Costs to the Department of Transportation associated with the bill's provisions regarding rock crushers are not expected to be significant.

The provision relating to the TCEQ being required to provide staffing to the Study Commission on Water for Environmental Flows is expected to result in a cost of \$15,000 annually to the TCEQ and require 0.3 additional FTE.

Local Government Impact

No significant fiscal implication to units of local government is anticipated. Local governments could experience increased public notification costs. However, these costs are not expected to be significant.

Source Agencies: 580 Water Development Board, 582 Commission on Environmental Quality, 601 Department of Transportation

LBB Staff: JK, CL, TL

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

May 9, 2003

TO: Honorable Kenneth Armbrister, Chair, Senate Committee on Natural Resources

FROM: John Keel, Director, Legislative Budget Board

IN RE: **HB2877** by Bonnen (Relating to the permitting procedures of the Texas Commission on Environmental Quality.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would require the Texas Commission on Environmental Quality (TCEQ) to extend public comment periods and makes changes to contested case hearing requirements. It would also change requirements for responding to public comments and place restrictions on the types of issues that can be referred to hearing by the TCEQ.

The changes proposed by the bill are not expected to require significant additional resources to implement.

Local Government Impact

No significant fiscal implication to units of local government is anticipated. Local governments could experience increased public notification costs. However, these costs are not expected to be significant.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JK, CL, TL

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

Revision 1

April 18, 2003

TO: Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

FROM: John Keel, Director, Legislative Budget Board

IN RE: **HB2877** by Bonnen (Relating to the permitting procedures of the Texas Commission on Environmental Quality.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would require the Texas Commission on Environmental Quality (TCEQ) to extend public comment periods and makes changes to contested case hearing requirements. It would also change requirements for responding to public comments and place restrictions on the types of issues that can be referred to hearing by the TCEQ.

The changes proposed by the bill are not expected to require significant additional resources to implement.

Local Government Impact

No significant fiscal implication to units of local government is anticipated. Local governments could experience increased public notification costs. However, these costs are not expected to be significant.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JK, CL, TL

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

April 18, 2003

TO: Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

FROM: John Keel, Director, Legislative Budget Board

IN RE: **HB2877** by Bonnen (Relating to the permitting procedures of the Texas Commission on Environmental Quality.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would require the Texas Commission on Environmental Quality (TCEQ) to extend public comment periods and makes changes to contested case hearing requirements. It would also change requirements for responding to public comments and place restrictions on the types of issues that can be referred to hearing by the TCEQ.

The changes proposed by the bill are not expected to require significant additional resources to implement.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JK, CL, TL

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

April 7, 2003

TO: Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

FROM: John Keel, Director, Legislative Budget Board

IN RE: **HB2877** by Bonnen (Relating to the permitting procedures of the Texas Commission on Environmental Quality.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would revise the public participation procedures applicable to environmental permit applications where there is an opportunity to request a contested case hearing. The Executive Director (ED) of the Texas Commission on Environmental Quality (ED) would be required to respond only to comments received in writing, in contrast to the current process that requires a response to spoken comments received at public meetings.

The bill would impose stricter time frames for the filing of hearing requests. As opposed to the current process that allows for hearing requests to be considered timely at any point after the application is filed, a hearing request would not be timely unless it was filed during the prescribed period following transmittal of the ED's response to comments. The bill also would revise the time frame for filing requests for reconsideration to allow for filing after the publication of the ED's preliminary decision.

New criteria would also be imposed on persons requesting a hearing with the State Office of Administrative Hearings (SOAH). Only persons who submitted timely written comments could request a hearing, and their hearing request could only relate to the issues they raised during the comment period and could not relate to issues that may have been raised by others. The bill also revised the criteria for issues that must be contained in a valid hearing request. Under the bill the issues would have to be supported by competent evidence showing a reasonable basis for a factual dispute. The issue would have to be discrete and not a broad or general objection.

The bill would also impose requirements for air applications. A person challenging issuance of an air permit would be required to file a "request for initiation of the public participation process" in response to the first notice of the application, rather than a request for hearing.

The bill could result in some increased administrative costs to the TCEQ. However, such costs are not expected to be significant. There could be fewer cases referred to the SOAH as a result of the bill's passage. However, such savings are not expected to be significant.

Local Government Impact

No significant fiscal implications are anticipated for local governments.

Local governments which have equipment going through the permitting process may experience increased costs due to additional public notice criteria. However, such costs are not expected to be significant.

Source Agencies: 360 State Office of Administrative Hearings, 582 Commission on Environmental Quality

LBB Staff: JK, CL, TL

ADOPTED *as amended*

MAY 27 2003

Lotay Spaul
Secretary of the Senate

By: _____

Substitute the following for H.B. No. 2877:

By: *Amber*

H.B. No. 2877

C.S. H.B. No. 2877

A BILL TO BE ENTITLED

AN ACT

relating to certain permitting procedures of the Texas Commission
on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 5.555, Water Code, is
amended to read as follows:

(a) The executive director, in accordance with procedures
provided by commission rule, shall file with the chief clerk of the
commission a response to each relevant and material public comment
on the preliminary decision filed in writing during the public
comment period.

SECTION 2. Section 5.556, Water Code, is amended by
amending Subsections (a), (c), and (d) and adding Subsections (g)
and (h) to read as follows:

(a) A person may request that the commission reconsider the
executive director's decision or hold a contested case hearing. A
request for reconsideration of the executive director's decision or
for a contested case hearing must be filed with the commission after
transmittal of the executive director's response to public comments
and during the period provided by commission rule.

(c) The commission may not grant a request for a contested
case hearing unless the commission determines that the request was
filed by an affected person, as defined by Section 5.115, who
submitted written comments during the public comment period or by a

local government with authority under state law over the issues contemplated by the application upon a showing of good cause for not having submitted written comments during the comment period.

(d) The commission may not refer an issue to the State Office of Administrative Hearings for a hearing unless the commission determines that ~~[the issue]~~:

(1) the issue involves a disputed question of fact;

(2) the hearing request is based on information in the record establishing a reasonable basis for the factual dispute and describes how the executive director's response to comments failed to resolve the dispute;

(3) the issue is a specific, identifiable, technical dispute regarding the application or draft permit rather than an expression of generalized public health or environmental concerns or objections;

(4) the issue was raised during the public comment period by the person requesting the hearing; and

(5) the issue ~~[(4)]~~ is relevant and material to the decision on the application.

(g) Notwithstanding other law, public notice of a contested case hearing that the commission grants under this section is not required. Notice of a hearing shall be provided to the applicant, the office of public interest counsel, the executive director, and the person whose hearing requests have been granted.

(h) Notwithstanding other law, an application to upgrade a permitted landfill facility to meet the requirements of 40 C.F.R. Part 258 submitted to the commission before April 30, 2003, shall be

1 considered by the commission as a modification as defined by
2 commission rules.

3 SECTION 3. Section 7.0025, Water Code, is amended to read as
4 follows:

5 Sec. 7.0025. INITIATION OF ENFORCEMENT ACTION USING
6 INFORMATION PROVIDED BY PRIVATE INDIVIDUAL. (a) In this section,
7 "relevant commission protocols" means protocols that are used by
8 the commission or determined to be acceptable by the executive
9 director.

10 (b) The commission may initiate an enforcement action on a
11 matter under its jurisdiction under this code or the Health and
12 Safety Code based on a combination of information the commission
13 [it] receives from a private individual and information developed
14 by the commission if that combined information, in the commission's
15 judgment, is of sufficient value and credibility to warrant the
16 initiation of an enforcement action.

17 (c) ~~[(b)]~~ The executive director or the executive
18 director's designated representative may evaluate the value and
19 credibility of information received from a private individual and
20 the merits of any proposed enforcement action based on that
21 information. In evaluating information under this subsection, the
22 executive director or the executive director's designated
23 representative shall consider the following criteria:

24 (1) the individual providing the information must be
25 willing to:

26 (A) submit a sworn affidavit attesting to the
27 facts that constitute the alleged violation and authenticating any

1 writings, recordings, or photographs provided by the individual;
2 and

3 (B) testify in any enforcement proceedings
4 regarding the alleged violation; and

5 (2) if the executive director relies on any physical
6 or sampling data submitted by an individual to prove one or more
7 elements of an enforcement case:

8 (A) the data must have been collected or gathered
9 in accordance with relevant commission protocols; and

10 (B) the individual submitting the physical or
11 sampling data must submit a sworn affidavit that the individual
12 followed relevant commission protocols when collecting the data.

13 (d) [~~e~~] The commission by rule may adopt additional
14 criteria for the executive director to use in evaluating the value
15 and credibility of information received from a private individual
16 and for use of that information in an enforcement action.

17 (e) [~~d~~] A private individual who submits information on
18 which the commission relies for all or part of an enforcement case
19 may be called to testify in the enforcement proceedings and is
20 subject to all sanctions under law for knowingly falsifying
21 evidence. If the commission relies on the information submitted by
22 a private individual to prove an enforcement case, any physical or
23 sampling data must have been collected or gathered in accordance
24 with commission protocols. The commission is not required to call a
25 private individual who provides information on which the commission
26 relies unless doing so is essential to the enforcement action.

27 (f) The commission may not use information provided by a

1 private individual if the information was obtained by trespass or
2 another illegal act.

3 (g) Information provided by a private individual that is
4 used in an enforcement action is subject to the rules of evidence.

5 SECTION 4. Subchapter C, Chapter 361, Health and Safety
6 Code, is amended by adding Section 361.1145 to read as follows:

7 Sec. 361.1145. PROHIBITION OF PERMIT FOR CERTAIN
8 SOLIDIFIED, COMMERCIAL INDUSTRIAL SOLID WASTE FACILITIES. The
9 commission may not issue a permit for the storage, processing, or
10 disposal of solidified, commercial, industrial solid waste in a
11 solution-mined salt dome cavern or a sulphur mine located within
12 one mile of a drinking water well, school, place of worship, or
13 public park.

14 SECTION 5. Section 382.056, Health and Safety Code, is
15 amended by amending Subsections (b), (g), (h), (i), (l), (m), and
16 (n) and adding Subsections (s) and (t) to read as follows:

17 (b) The notice must include:

18 (1) a description of the location or proposed location
19 of the facility or federal source;

20 (2) the location at which a copy of the application is
21 available for review and copying as provided by Subsection (d);

22 (3) a description, including a telephone number, of
23 the manner in which the commission may be contacted for further
24 information;

25 (4) a description, including a telephone number, of
26 the manner in which the applicant may be contacted for further
27 information;

1 (5) a description of the applicable procedural rights
2 and obligations of the public, printed in a font style or size that
3 clearly provides emphasis and distinguishes it from the remainder
4 of the notice~~[, that includes a statement that a person who may be~~
5 ~~affected by emissions of air contaminants from the facility,~~
6 ~~proposed facility, or federal source is entitled to request a~~
7 ~~hearing from the commission];~~

8 (6) a statement that a person who may be affected by
9 emissions of air contaminants from the facility, proposed facility,
10 or federal source is entitled to file a notice of contest;

11 (7) a description of the procedure by which a person
12 may be placed on a mailing list in order to receive additional
13 information about the application;

14 (8) ~~[(7)]~~ the time and location of any public meeting
15 to be held under Subsection (e); and

16 (9) ~~[(8)]~~ any other information the commission by rule
17 requires.

18 (g) If, in response to the notice published under Subsection
19 (a) for a permit or permit amendment under Section 382.0518 or a
20 permit renewal review under Section 382.055, a person files a
21 notice of contest ~~[request]~~ during the period provided by
22 commission rule ~~[that the commission hold a public hearing]~~ and the
23 notice of contest ~~[request]~~ is not withdrawn before the date the
24 preliminary decision is issued, the applicant shall publish notice
25 of the preliminary decision in a newspaper, and the commission
26 shall seek public comment on the preliminary decision in accordance
27 with~~[. The commission shall consider the request for public~~

1 ~~hearing under~~] the procedures provided by Subsections (i)-(n).
2 However, the [The] commission may not seek further public comment
3 or hold a public hearing [~~under the procedures provided by~~
4 ~~Subsections (i)-(n)]~~ in response to a notice of contest [~~request~~
5 ~~for a public hearing]~~ on an amendment, modification, or renewal
6 that would not result in an increase in allowable emissions and
7 would not result in the emission of an air contaminant not
8 previously emitted.

9 (h) The commission shall consider any hearing request
10 regarding [~~If, in response to the notice published under Subsection~~
11 ~~(a) for]~~ a permit under Section 382.054[, ~~a person requests during~~
12 ~~the public comment period provided by commission rule that the~~
13 ~~commission hold a public hearing, the commission shall consider the~~
14 ~~request]~~ under the procedures provided by Section 382.0561 and not
15 under the procedures provided by Subsections (i)-(n).

16 (i) The commission by rule shall establish the form and
17 content of the notice of preliminary decision under Subsection (g),
18 the manner of publication, and the duration of the public comment
19 period. The notice must include:

20 (1) the information required by Subsections
21 [~~Subsection~~] (b)(1)-(5) and (7)-(9);

22 (2) a summary of the preliminary decision;

23 (3) the location at which a copy of the preliminary
24 decision is available for review and copying as provided by
25 Subsection (j);

26 (4) a description of the manner in which comments
27 regarding the preliminary decision may be submitted; and

1 (5) any other information the commission by rule
2 requires.

3 (1) The executive director, in accordance with procedures
4 adopted by the commission by rule, shall file with the chief clerk
5 of the commission a response to each relevant and material public
6 comment on the preliminary decision filed in writing during the
7 public comment period.

8 (m) The chief clerk of the commission shall transmit the
9 executive director's decision, the executive director's response to
10 public comments, and instructions for requesting that the
11 commission reconsider the executive director's decision or hold a
12 contested case hearing to:

13 (1) the applicant;

14 (2) any person who submitted comments during the
15 public comment period;

16 (3) any person who requested to be on the mailing list
17 for the permit action; and

18 (4) any person who timely filed a notice of contest
19 [~~request for a public hearing~~] in response to the notice published
20 under Subsection (a).

21 (n) Except as provided by Section 382.0561, the commission
22 shall consider a request that the commission reconsider the
23 executive director's decision or hold a contested case [~~public~~]
24 hearing in accordance with the procedures provided by Sections
25 5.556 and 5.557, Water Code.

26 (s) If a notice of contest is not filed or is withdrawn under
27 Subsection (g), any public hearing requested in response to a later

1 public notice required solely by federal program requirements, if
2 granted, shall be conducted in accordance with Section 382.0561 and
3 not under Chapter 2001, Government Code.

4 (t) The commission shall extend the public comment period
5 automatically until the close of the public meetings held under
6 Subsection (k). The commission may not extend the period during
7 which a notice of contest or request for reconsideration may be
8 filed.

9 SECTION 6. Section 382.0564, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 382.0564. NOTIFICATION TO OTHER GOVERNMENTAL
12 ENTITIES. (a) The commission by rule may allow for notification of
13 and review by the administrator and affected states of permit
14 applications, revisions, renewals, or draft permits prepared under
15 Sections 382.054-382.0543.

16 (b) The commission shall mail notice of intent to obtain a
17 permit, permit amendment, or other authorization for a
18 rock-crushing facility associated with blasting operations to an
19 affected municipality.

20 (c) An affected municipality entitled to notice under
21 Subsection (b) may submit comments to the commission within 30 days
22 of receiving a notice of intent under Subsection (b).

23 (d) The commission may not issue a permit, permit amendment,
24 or other authorization for a rock-crushing facility associated with
25 blasting operations if the commission receives from an affected
26 municipality a resolution in opposition to issuance of the permit,
27 permit amendment, or other authorization during the 30-day comment

1 period.

2 (e) The commission shall prohibit a currently permitted
3 rock-crushing facility from being associated with blasting
4 operations if:

5 (1) blasting operations have not taken place on the
6 tract for 10 or more years before April 10, 2003; and

7 (2) the commission receives from an affected
8 municipality a resolution in opposition to the currently permitted
9 rock-crushing facility.

10 (f) For purposes of this section, an "affected
11 municipality" means a municipality whose primary source of drinking
12 water is an aquifer made, wholly or partly, of water-bearing
13 limestone or dolomite which is located in a county:

14 (1) that is adjacent to a county with a population of
15 500,000 or more; and

16 (2) in which is located a portion of a body of water
17 into which a discharge of pollutants is prohibited by the
18 commission under 30 T.A.C. Chapter 311.

19 SECTION 7. Section 2003.047, Government Code, is amended by
20 adding Subsections (p) and (q) to read as follows:

21 (p) In designating parties to a hearing on a permit
22 application, the administrative law judge may name as parties only
23 the executive director of the commission, the office of public
24 interest counsel, the permit applicant, and other persons whose
25 hearing requests have been granted by the commission and whose
26 issues have been referred by the commission for a contested case
27 hearing. The executive director may participate in a contested

1 case hearing only to the extent described in Section 5.228, Water
2 Code.

3 (q) An administrative law judge may grant a motion for a
4 summary disposition on any or all of the issues referred for hearing
5 and issue a proposal for decision that resolves the contested case
6 without an evidentiary hearing or with a limited evidentiary
7 hearing as provided by commission rules.

8 SECTION 8. Subchapter B, Chapter 11, Water Code, is amended
9 by adding Sections 11.0235, 11.0236, and 11.0237 to read as
10 follows:

11 Sec. 11.0235. POLICY REGARDING WATERS OF THE STATE.

12 (a) The waters of the state are held in trust for the public, and
13 the right to use state water may be appropriated only as expressly
14 authorized by law.

15 (b) Maintaining the biological soundness of the state's
16 rivers, lakes, bays, and estuaries is of great importance to the
17 public's economic health and general well-being.

18 (c) The legislature has expressly required the commission
19 while balancing all other interests to consider and provide for the
20 freshwater inflows necessary to maintain the viability of the
21 state's bay and estuary systems in the commission's regular
22 granting of permits for the use of state waters.

23 (d) The legislature has not expressly authorized granting
24 water rights exclusively for:

25 (1) instream flows dedicated to environmental needs or
26 inflows to the state's bay and estuary systems; or

27 (2) other similar beneficial uses.

1 (e) The fact that greater pressures and demands are being
2 placed on the water resources of the state makes it of paramount
3 importance to reexamine the process for ensuring that these
4 important priorities are effectively addressed in clear
5 delegations of authority to the commission.

6 Sec. 11.0236. STUDY COMMISSION ON WATER FOR ENVIRONMENTAL
7 FLOWS. (a) In recognition of the importance that the ecological
8 soundness of our riverine, bay, and estuary systems and riparian
9 lands has on the economy, health, and well-being of the state there
10 is created the Study Commission on Water for Environmental Flows.

11 (b) The study commission is composed of 15 members as
12 follows:

13 (1) two members appointed by the governor;
14 (2) five members appointed by the lieutenant governor;
15 (3) five members appointed by the speaker of the house
16 of representatives;

17 (4) the presiding officer of the commission or the
18 presiding officer's designee;

19 (5) the chairman of the board or the chairman's
20 designee; and

21 (6) the presiding officer of the Parks and Wildlife
22 Commission or the presiding officer's designee.

23 (c) Of the members appointed under Subsection (b)(2):

24 (1) one member must represent a river authority or
25 municipal water supply agency or authority;

26 (2) one member must represent an entity that is
27 distinguished by its efforts in resource protection; and

1 (3) three members must be members of the senate.

2 (d) Of the members appointed under Subsection (b)(3):

3 (1) one member must represent a river authority or
4 municipal water supply agency or authority;

5 (2) one member must represent an entity that is
6 distinguished by its efforts in resource protection; and

7 (3) three members must be members of the house of
8 representatives.

9 (e) Each appointed member of the study commission serves at
10 the will of the person who appointed the member.

11 (f) The appointed senator with the most seniority and the
12 appointed house member with the most seniority serve together as
13 co-presiding officers of the study commission.

14 (g) A member of the study commission is not entitled to
15 receive compensation for service on the study commission but is
16 entitled to reimbursement of the travel expenses incurred by the
17 member while conducting the business of the study commission, as
18 provided by the General Appropriations Act.

19 (h) The study commission may accept gifts and grants from
20 any source to be used to carry out a function of the study
21 commission.

22 (i) The commission shall provide staff support for the study
23 commission.

24 (j) The study commission shall conduct public hearings and
25 study public policy implications for balancing the demands on the
26 water resources of the state resulting from a growing population
27 with the requirements of the riverine, bay, and estuary systems

1 including granting permits for instream flows dedicated to
2 environmental needs or bay and estuary inflows, use of the Texas
3 Water Trust, and any other issues that the study commission
4 determines have importance and relevance to the protection of
5 environmental flows. In evaluating the options for providing
6 adequate environmental flows, the study commission shall take
7 notice of the strong public policy imperative that exists in this
8 state recognizing that environmental flows are important to the
9 biological health of our parks, game preserves, and bay and estuary
10 systems and are high priorities in the permitting process. The
11 study commission shall specifically address ways that the
12 ecological soundness of these systems will be ensured in the water
13 allocation process.

14 (k) The study commission:

15 (1) shall appoint an advisory scientific committee
16 that will:

17 (A) serve as impartial scientific advisors and
18 reviewers for the study commission; and

19 (B) have a membership of no fewer than five and no
20 more than nine total members chosen by the study commission to
21 represent a variety of areas of relevant technical expertise;

22 (2) may appoint additional advisory committees to
23 assist the study commission; and

24 (3) may draft proposed legislation to modify existing
25 water-rights permitting statutes.

26 (1) Not later than December 1, 2004, the study commission
27 shall issue a report summarizing:

1 (1) any hearings conducted by the study commission;
2 (2) any studies conducted by the study commission;
3 (3) any legislation proposed by the study commission;
4 and
5 (4) any other findings and recommendations of the
6 study commission.

7 (m) The study commission shall promptly deliver copies of
8 the report to the governor, lieutenant governor, and speaker of the
9 house of representatives.

10 (n) The study commission shall adopt rules to administer
11 this section.

12 (o) The study commission is abolished and this section
13 expires September 1, 2005.

14 Sec. 11.0237. WATER RIGHTS FOR INSTREAM FLOWS DEDICATED TO
15 ENVIRONMENTAL NEEDS OR BAY AND ESTUARY INFLOWS. (a) The commission
16 may not issue a new permit for instream flows dedicated to
17 environmental needs or bay and estuary inflows. This section does
18 not prohibit the commission from issuing an amendment to an
19 existing permit or certificate of adjudication to change the use to
20 or add a use for instream flows dedicated to environmental needs or
21 bay and estuary inflows.

22 (b) This section does not alter the commission's
23 obligations under Section 11.042(b), 11.046(b), 11.085(k)(2)(F),
24 11.134(b)(3)(D), 11.147, 11.1491, 16.058, or 16.059.

25 (c) This section expires September 1, 2005.

26 SECTION 9. Subsections (d) and (e), Section 11.147, Water
27 Code, are amended to read as follows:

1 (d) In its consideration of an application to store, take,
2 or divert water, the commission shall include in the permit, to the
3 extent practicable when considering all public interests, those
4 conditions considered by the commission necessary to maintain
5 ~~[consider the effect, if any, of the issuance of the permit on]~~
6 existing instream uses and water quality of the stream or river to
7 which the application applies.

8 (e) The commission shall include in the permit, to the
9 extent practicable when considering all public interests, those
10 conditions considered by the commission necessary to maintain ~~[also~~
11 ~~consider the effect, if any, of the issuance of the permit on]~~ fish
12 and wildlife habitats.

13 SECTION 10. Rules adopted by the Texas Commission on
14 Environmental Quality under Section 26.040, Water Code, before the
15 effective date of this Act are validated as of the dates they were
16 adopted and remain valid until they are modified or repealed by the
17 commission.

18 SECTION 11. (a) Except as provided by Subsection (b) of
19 this section, this Act takes effect September 1, 2003.

20 (b) Sections 8 and 9 of this Act take effect immediately if
21 this Act receives a vote of two-thirds of all the members elected to
22 each house, as provided by Section 39, Article III, Texas
23 Constitution. If this Act does not receive the vote necessary for
24 immediate effect, Sections 8 and 9 of this Act take effect September
25 1, 2003.

26 (c) The changes in law made by Sections 1, 2, 4, 5, and 7 of
27 this Act apply only to an application for a permit, permit

1 amendment, or permit renewal for which the notice of preliminary
2 decision required by Section 5.553, Water Code, or Section
3 382.056(g), Health and Safety Code, is published on or after
4 September 1, 2003. A permit, permit amendment, or permit renewal
5 for which the notice of preliminary decision required by Section
6 5.553, Water Code, or Section 382.056(g), Health and Safety Code,
7 is published before September 1, 2003, is governed by the law in
8 effect on the date it was published, and that law is continued in
9 effect for that purpose.

10 (d) The changes in law made by Sections 8 and 9 of this Act
11 apply to a permit application pending before the Texas Commission
12 on Environmental Quality on the effective date of those sections or
13 filed with the commission on or after that date.

ADOPTED

MAY 27 2003

Atty. Gen.
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY

Ken Cuccinelli

1 Amend C.S.H.B. 2877 by adding four appropriately numbered
2 sections as follows, and renumbering all other sections
3 accordingly:

4 AMENDMENT SECTION 1. Section 382.056(r), Health and Safety
5 Code, is amended as follows:

6 (r) This section does not apply to:

7 (1) the relocation or change of location of a portable
8 facility to a site where a portable facility [~~permitted by the~~
9 ~~commission is located if no portable facility~~] has been located
10 at the proposed site at any time during the previous two years;
11 [~~or~~]

12 (2) a facility located temporarily in the right-of-way,
13 or contiguous to the right-of-way, of a public works project; or

14 (3) a facility described by Section 382.065(c), unless
15 that facility is in a county with a population of 2.4 million or
16 more or in a county adjacent to such a county.

17 AMENDMENT SECTION 2. Section 382.056, Health and Safety
18 Code, as added by Chapter 965, Acts of the 77th Legislature,
19 Regular Session, 2001, is amended to read as follows:

Section 382.065. CERTAIN LOCATIONS FOR OPERATING CONCRETE
CRUSHING FACILITY PROHIBITED. (a) The commission by rule shall
prohibit the [~~location of or~~] operation of a concrete crushing
facility at a location within 440 yards of a building in use
[~~used~~] as a single or multifamily residence, school, or place of
worship at the time the application for a permit to operate the
facility at a site near the residence, school, or place of
worship is filed with the commission. The measurement of
distance for purposes of this subsection shall be taken from the
point on the concrete crushing facility that is nearest to the
residence, school, or place of worship toward the point on the
residence, school, or place of worship that is nearest the
concrete crushing facility.

(b) Subsection (a) [~~This section~~] does not apply to a [~~an~~
~~existing~~] concrete crushing facility:

(1) at a location for which commission authorization
for the operation of a concrete crushing facility was in effect
on September 1, 2001; or

(2) at a location that satisfies the distance
requirements of Subsection (a) at the time the application for
the initial authorization for the operation of that facility at
that location is filed with the commission, provided that the
authorization is granted and maintained, regardless of whether a

1 single or multifamily residence, school, or place of worship is
2 subsequently built or put to use within 440 yards of the
3 facility.

4 (c) Except as provided by Subsection (d), Subsection (a)
5 does not apply to a concrete crushing facility that:

6 (1) is engaged in crushing concrete and other materials
7 produced by the demolition of a structure at the location of the
8 structure and the concrete and other materials are being crushed
9 primarily for use at that location;

10 (2) operates at that location for not more than 180
11 days;

12 (3) the commission determines will cause no adverse
13 environmental or health effects by operating at that location;
14 and

15 (4) complies with conditions stated in commission
16 rules, including operating conditions.

17 (d) Notwithstanding Subsection (c), Subsection (a) applies
18 to a concrete crushing facility in a county with a population of
19 2.4 million or more or in a county adjacent to such a county.

20 AMENDMENT SECTION 3. The Texas Commission on Environmental
21 Quality shall adopt rules to implement Section 382.065, Health
22 and Safety Code, as amended by this Act, as soon as practicable
23 and not later than January 1, 2004.

1 AMENDMENT SECTION 4. A change in law made by this Act the
2 effect of which is to restrict the location or operation of a
3 concrete crushing facility does not apply to a facility for which
4 an application for authorization to operate at a particular
5 location is filed before the effective date of this Act.

ADOPTED

MAY 27 2003

Floor Amendment 2

Lotay Spaw
Secretary of the Senate

By *Ken Ambrosio*

Amend CSHB 2877 by adding a new SECTION 6 to read as follows and renumbering the following SECTIONS appropriately:

SECTION 6. Section 7.141, Water Code, is amended by adding Subdivision (2-a) to read as follows:

(2-a) "Dispose of" means to discharge, deposit, inject, dump, spill, leak, or place solid waste, hazardous waste, medical waste, used oil, low-level radioactive waste, or a lead-acid battery, whether containerized or uncontainerized, into or on land or water so that the solid waste, hazardous waste, medical waste, used oil, low-level radioactive waste, lead-acid battery, or any constituent thereof may be emitted into the air, discharged into surface water or groundwater, or introduced into the environment in any other manner. The term does not include passive migration, continuous release, seepage, or other movement that occurs:

- and
- (A) after the substance is initially disposed of;
 - (B) without human initiation or assistance.

ADOPTED

MAY 27 2003

FLOOR AMENDMENT NO. 3

Atty. Gen.
Secretary of the Senate

K. C. Ambrose

Amend H.B.2877 as follows:

(1) Insert a new SECTION of the bill to read as follows:

SECTION ____ . Section 36.101, Water Code, is amended by adding Subsection (d) to read as follows:

(d) The commission has principal and exclusive authority as to the control, regulation, or abatement of nonpoint source pollution of water or other regulation of water quality in terms of limiting a landowner's ability to develop or use that land in the jurisdiction of any water district or authority with management and regulatory authority over groundwater withdrawals.

(2) Insert a new SECTION of the bill to read as follows:

SECTION ____ . This section supersedes any other provision of this Act to the extent of any conflict. Section 36.101(d), Water Code, as added by this Act, supersedes any other applicable law or action taken under that law to the extent of any conflict. Any rule or order of an applicable district or authority purporting to regulate water quality as described by the change in law made by this Act to Section 36.101, Water Code, may not be enforced regardless of whether the adoption date of the rule or order is before, on, or after the effective date of this Act.

ADOPTED

MAY 27 2003

Lotay Shaw
Secretary of the Senate

FLOOR AMENDMENT NO. 4

BY: *Lucio*

1 Amend C.S.H.B. 2877 by adding a new Subsection (g) to
2 Section 36.015, Water Code, to read as follows:

3 (g) Notwithstanding other law and any other applicable
4 provisions of this chapter, the commission shall certify a
5 petition filed under Section 36.013 and give notice and conduct
6 a public meeting on the petition if the filings under Section
7 36.013 (b) and (c) show that the district is comprised of
8 400,000 or more coterminous acres owned by a single landowner.
9 Chapter 49, Water Code, does not apply to a district created
10 under this subsection, except that Section 49.223, Water Code,
11 shall apply to the district.

ADOPTED

MAY 27 2003

FLOOR AMENDMENT NO. 6

Letty Spew
Secretary of the Senate

BY: Jackson

Amend C.S.H.B. 2877 as follows:

(1) Strike existing Section 361.122, Health and Safety Code, and replace it with the following language by adding a new SECTION and renumbering the subsequent sections accordingly:

SECTION ____ . Section 361.122, Health and Safety Code, is amended to read as follows:

Sec. 361.122. DENIAL OF CERTAIN LANDFILL PERMITS. (a) The commission may not issue a permit for a Type IV landfill if:

(1) the proposed site is located within 100 feet of a canal that is used as a public drinking water source or for irrigation of crops used for human or animal consumption;

(2) the proposed site is located in a county with a population of more than 225,000 that is located adjacent to the Gulf of Mexico; and

(3) prior to final consideration of the application by the commission, the commissioners of the county in which the facility is located have adopted a resolution recommending denial of the application.

(b) In addition to the restriction on the location of a Type IV landfill under Subsection (a), the commission may not issue a permit for a Type IV landfill if, on or before January 13, 2003, the proposed facility was determined by the applicable regional planning commission created under Chapter 391, Local Government Code, to be incompatible with a regional solid waste management plan adopted under Section 363.062 of this code.

ADOPTED

MAY 27 2003

Leta Spaw
Secretary of the Senate

FLOOR AMENDMENT NO.

7

BY:

Maddala

- 1 Amend C.S.H.B. 2877 as follows:
- 2 (1) On page 1, line 22, strike "and (h)"
- 3 (2) On page 1, line 57-61, strike subsection (h).

ADOPTED

MAY 27 2003

Atty. Gen.
Secretary of the Senate

COMMITTEE AMENDMENT NO. 8

BY: Willis

1 Amend C.S.H.B. No. 2877 by inserting a new appropriately
2 numbered SECTION and renumbering subsequent sections accordingly.

3 SECTION ____ TEXAS COMMISSION ON ENVIRONMENTAL QUALITY;
4 EXPEDITED LETTER FEE. Section 5.701, Texas Water Code is amended by
5 adding subsection (r) to read as follows:

6 r) The fee for processing a request for an expedited letter
7 from the executive director stating the total depth of surface
8 casing needed during the drilling of wells to protect usable ground
9 waters in the state and required for the processing of certain
10 permits from the Railroad Commission of Texas is not to exceed \$75.

11

3rd Reading

ADOPTED

MAY 30 2003

Atty. Gen.
Secretary of the Senate

FLOOR AMENDMENT NO. 1

By: 

- 1 Amend C.S.H.B. No. 2877 by striking Floor Amendment Nos. 1, 3, 4, 6,
- 2 and 8.

3rd Reading

Floor amendment ²~~9~~

By Fraser

Amend C.S.H.B.2877 by deleting Section 6 and renumbering the subsequent sections accordingly.

ADOPTED

MAY 30 2003


Secretary of the Senate

SENATE AMENDMENTS

03 MAY 27 PM 9:04

2nd Printing

HOUSE OF REPRESENTATIVES

By: Bonnen, Homer, Chisum, Stick

H.B. No. 2877

A BILL TO BE ENTITLED

AN ACT

relating to the permitting procedures of the Texas Commission on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 5.554, Water Code, is amended to read as follows:

Sec. 5.554. PUBLIC MEETING. (a) During the public comment period, the executive director may hold one or more public meetings in the county in which the facility is located or proposed to be located. The executive director shall hold a public meeting:

(1) on the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located; or

(2) if the executive director determines that there is substantial public interest in the proposed activity.

(b) The commission shall extend the public comment period automatically until the close of the public meetings. The commission may not extend the period during which requests for initiation of the public participation process or requests for reconsideration may be filed.

SECTION 2. Section 5.555(a), Water Code, is amended to read as follows:

(a) The executive director, in accordance with procedures provided by commission rule, shall file with the chief clerk of the

1 commission a response to each relevant and material public comment
2 on the preliminary decision filed in writing during the public
3 comment period.

4 SECTION 3. Section 5.556, Water Code, is amended by
5 amending Subsections (a), (c), and (d) and adding Subsection (g) to
6 read as follows:

7 (a) A person may request that the commission reconsider the
8 executive director's decision or hold a contested case hearing. A
9 request for reconsideration of the executive director's decision
10 must be filed with the commission after publication of the
11 preliminary decision during the period provided by commission rule.
12 A request for a contested case hearing must be filed with the
13 commission after transmittal of the executive director's response
14 to public comments during the period provided by commission rule.

15 (c) The commission may not grant a request for a contested
16 case hearing unless the commission determines that the request was
17 filed by an affected person as defined by Section 5.115 who
18 submitted written comments during the public comment period.

19 (d) The commission may not refer an issue to the State
20 Office of Administrative Hearings for a hearing unless the
21 commission determines that [~~the issue~~]:

22 (1) the issue involves a disputed question of fact;

23 (2) the hearing request provides substantial
24 information establishing a reasonable basis for the factual dispute
25 and describes how the executive director's response to comments
26 failed to resolve the dispute;

27 (3) the issue is discrete and not a broad or

1 generalized objection;

2 (4) the issue was raised during the public comment
3 period by the person requesting the hearing; and

4 (5) the issue [~~(3)~~] is relevant and material to the
5 decision on the application.

6 (g) Notwithstanding other law, public notice of a contested
7 case hearing the commission grants under this section is not
8 required. The commission by rule shall provide for notice of a
9 hearing the commission grants under this section to be given to the
10 applicant, the office of public interest counsel, the executive
11 director, and the persons whose hearing requests have been granted.

12 SECTION 4. Section 382.056, Health and Safety Code, is
13 amended by amending Subsections (b), (g), (h), (i), (l), (m), and
14 (n) and adding Subsections (s) and (t) to read as follows:

15 (b) The notice must include:

16 (1) a description of the location or proposed location
17 of the facility or federal source;

18 (2) the location at which a copy of the application is
19 available for review and copying as provided by Subsection (d);

20 (3) a description, including a telephone number, of
21 the manner in which the commission may be contacted for further
22 information;

23 (4) a description, including a telephone number, of
24 the manner in which the applicant may be contacted for further
25 information;

26 (5) a description of the applicable procedural rights
27 and obligations of the public, printed in a font style or size that

1 clearly provides emphasis and distinguishes it from the remainder
2 of the notice [~~that includes a statement that a person who may be~~
3 ~~affected by emissions of air contaminants from the facility,~~
4 ~~proposed facility, or federal source is entitled to request a~~
5 ~~hearing from the commission~~];

6 (6) a statement that a person who may be affected by
7 emissions of air contaminants from the facility, proposed facility,
8 or federal source is entitled to request initiation of the public
9 participation process;

10 (7) a description of the procedure by which a person
11 may be placed on a mailing list in order to receive additional
12 information about the application;

13 (8) [~~(7)~~] the time and location of any public meeting
14 to be held under Subsection (e); and

15 (9) [~~(8)~~] any other information the commission by rule
16 requires.

17 (g) If, in response to the notice published under Subsection
18 (a) for a permit or permit amendment under Section 382.0518 or a
19 permit renewal review under Section 382.055, a person files a
20 request [~~requests~~] during the period provided by commission rule
21 that the commission initiate the public participation process [~~hold~~
22 ~~a public hearing~~] and the request is not withdrawn before the date
23 the preliminary decision is issued, the applicant shall publish
24 notice of the preliminary decision in a newspaper, and the
25 commission shall seek public comment on the preliminary decision in
26 accordance with [~~The commission shall consider the request for~~
27 ~~public hearing under~~] the procedures provided by Subsections

(i)-(n). However, the ~~[The]~~ commission may not seek further public comment or hold a public hearing ~~[under the procedures provided by Subsections (i)-(n)]~~ in response to a request for initiation of the ~~[a]~~ public participation process ~~[hearing]~~ on an amendment, modification, or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted.

(h) If, in response to the notice published under Subsection (a) for a permit under Section 382.054, a person requests during the public comment period provided by commission rule that the commission initiate the ~~[hold a]~~ public participation process ~~[hearing]~~, the commission shall consider the request under the procedures provided by Section 382.0561 and not under the procedures provided by Subsections (i)-(n).

(i) The commission by rule shall establish the form and content of the notice of preliminary decision under Subsection (g), the manner of publication, and the duration of the public comment period. The notice must include:

(1) the information required by Subsections ~~[Subsection]~~ (b) (1)-(5) and (7)-(9);

(2) a summary of the preliminary decision;

(3) the location at which a copy of the preliminary decision is available for review and copying as provided by Subsection (j);

(4) a description of the manner in which comments regarding the preliminary decision may be submitted that includes a statement that a person who may be affected by emissions of air

1 contaminants from the facility, proposed facility, or federal
2 source is entitled to request a hearing from the commission; and

3 (5) any other information the commission by rule
4 requires.

5 (1) The executive director, in accordance with procedures
6 adopted by the commission by rule, shall file with the chief clerk
7 of the commission a response to each relevant and material public
8 comment on the preliminary decision filed in writing during the
9 public comment period.

10 (m) The chief clerk of the commission shall transmit the
11 executive director's decision, the executive director's response to
12 public comments, and instructions for requesting that the
13 commission reconsider the executive director's decision or hold a
14 contested case hearing to:

15 (1) the applicant;

16 (2) any person who submitted comments during the
17 public comment period;

18 (3) any person who requested to be on the mailing list
19 for the permit action; and

20 (4) any person who timely filed a request for
21 initiation of the [a] public participation process [hearing] in
22 response to the notice published under Subsection (a).

23 (n) Except as provided by Section 382.0561, the commission
24 shall consider a request that the commission reconsider the
25 executive director's decision or hold a contested case [public]
26 hearing in accordance with the procedures provided by Sections
27 5.556 and 5.557, Water Code.

1 (s) If a request to initiate the public participation
2 process is not filed during the period prescribed by commission
3 rule for a permit or permit amendment under Section 382.0518 or for
4 a permit renewal review under Section 382.055, the commission shall
5 conduct a public hearing held in response to a later public notice
6 required solely by federal program requirements in accordance with
7 Section 382.0561 and not under Chapter 2001, Government Code.

8 (t) The commission shall extend the public comment period
9 automatically until the close of the public meetings held under
10 Subsection (k). The commission may not extend the period during
11 which requests for initiation of the public participation process
12 or requests for reconsideration may be filed.

13 SECTION 5. Section 2003.047, Government Code, is amended by
14 adding Subsections (p) and (q) to read as follows:

15 (p) In designating parties to a hearing on a permit
16 application, the administrative law judge may name as parties only
17 the executive director, the office of public interest counsel, the
18 permit applicant, and other persons whose hearing requests have
19 been granted by the commission and whose issues have been referred
20 by the commission for a contested case hearing. The executive
21 director may participate in a contested case hearing only to the
22 extent described in Section 5.228, Water Code.

23 (q) An administrative law judge may make a summary
24 disposition of the issues referred by the commission as provided by
25 commission rules.

26 SECTION 6. (a) This Act takes effect September 1, 2003.

27 (b) The changes in law made by this Act apply only to an

1 application for a permit, permit amendment, or permit renewal that
2 is filed with the Texas Commission on Environmental Quality on or
3 after September 1, 2003. A permit, permit amendment, or permit
4 renewal that is filed before that date is governed by the law in
5 effect on the date it was filed, and that law is continued in effect
6 for that purpose.

ADOPTED *as amended*

MAY 27 2003

Atty. Gen.
Secretary of the Senate

By: _____

H.B. No. 2877

Substitute the following for H.B. No. 2877:

By: *[Signature]*

C.S. H.B. No. 2877

A BILL TO BE ENTITLED

AN ACT

relating to certain permitting procedures of the Texas Commission
on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 5.555, Water Code, is
amended to read as follows:

(a) The executive director, in accordance with procedures
provided by commission rule, shall file with the chief clerk of the
commission a response to each relevant and material public comment
on the preliminary decision filed in writing during the public
comment period.

SECTION 2. Section 5.556, Water Code, is amended by
amending Subsections (a), (c), and (d) and adding Subsections (g)
and (h) to read as follows:

(a) A person may request that the commission reconsider the
executive director's decision or hold a contested case hearing. A
request for reconsideration of the executive director's decision or
for a contested case hearing must be filed with the commission after
transmittal of the executive director's response to public comments
and during the period provided by commission rule.

(c) The commission may not grant a request for a contested
case hearing unless the commission determines that the request was
filed by an affected person, as defined by Section 5.115, who
submitted written comments during the public comment period or by a

1 local government with authority under state law over the issues
2 contemplated by the application upon a showing of good cause for not
3 having submitted written comments during the comment period.

4 (d) The commission may not refer an issue to the State
5 Office of Administrative Hearings for a hearing unless the
6 commission determines that ~~[the issue]~~:

7 (1) the issue involves a disputed question of fact;

8 (2) the hearing request is based on information in the
9 record establishing a reasonable basis for the factual dispute and
10 describes how the executive director's response to comments failed
11 to resolve the dispute;

12 (3) the issue is a specific, identifiable, technical
13 dispute regarding the application or draft permit rather than an
14 expression of generalized public health or environmental concerns
15 or objections;

16 (4) the issue was raised during the public comment
17 period by the person requesting the hearing; and

18 (5) the issue ~~[-3-]~~ is relevant and material to the
19 decision on the application.

20 (g) Notwithstanding other law, public notice of a contested
21 case hearing that the commission grants under this section is not
22 required. Notice of a hearing shall be provided to the applicant,
23 the office of public interest counsel, the executive director, and
24 the person whose hearing requests have been granted.

25 (h) Notwithstanding other law, an application to upgrade a
26 permitted landfill facility to meet the requirements of 40 C.F.R.
27 Part 258 submitted to the commission before April 30, 2003, shall be

1 considered by the commission as a modification as defined by
2 commission rules.

3 SECTION 3. Section 7.0025, Water Code, is amended to read as
4 follows:

5 Sec. 7.0025. INITIATION OF ENFORCEMENT ACTION USING
6 INFORMATION PROVIDED BY PRIVATE INDIVIDUAL. (a) In this section,
7 "relevant commission protocols" means protocols that are used by
8 the commission or determined to be acceptable by the executive
9 director.

10 (b) The commission may initiate an enforcement action on a
11 matter under its jurisdiction under this code or the Health and
12 Safety Code based on a combination of information the commission
13 [it] receives from a private individual and information developed
14 by the commission if that combined information, in the commission's
15 judgment, is of sufficient value and credibility to warrant the
16 initiation of an enforcement action.

17 (c) ~~[(b)]~~ The executive director or the executive
18 director's designated representative may evaluate the value and
19 credibility of information received from a private individual and
20 the merits of any proposed enforcement action based on that
21 information. In evaluating information under this subsection, the
22 executive director or the executive director's designated
23 representative shall consider the following criteria:

24 (1) the individual providing the information must be
25 willing to:

26 (A) submit a sworn affidavit attesting to the
27 facts that constitute the alleged violation and authenticating any

1 writings, recordings, or photographs provided by the individual;
2 and

3 (B) testify in any enforcement proceedings
4 regarding the alleged violation; and

5 (2) if the executive director relies on any physical
6 or sampling data submitted by an individual to prove one or more
7 elements of an enforcement case:

8 (A) the data must have been collected or gathered
9 in accordance with relevant commission protocols; and

10 (B) the individual submitting the physical or
11 sampling data must submit a sworn affidavit that the individual
12 followed relevant commission protocols when collecting the data.

13 (d) [~~e~~] The commission by rule may adopt additional
14 criteria for the executive director to use in evaluating the value
15 and credibility of information received from a private individual
16 and for use of that information in an enforcement action.

17 (e) [~~d~~] A private individual who submits information on
18 which the commission relies for all or part of an enforcement case
19 may be called to testify in the enforcement proceedings and is
20 subject to all sanctions under law for knowingly falsifying
21 evidence. If the commission relies on the information submitted by
22 a private individual to prove an enforcement case, any physical or
23 sampling data must have been collected or gathered in accordance
24 with commission protocols. The commission is not required to call a
25 private individual who provides information on which the commission
26 relies unless doing so is essential to the enforcement action.

27 (f) The commission may not use information provided by a

1 private individual if the information was obtained by trespass or
2 another illegal act.

3 (g) Information provided by a private individual that is
4 used in an enforcement action is subject to the rules of evidence.

5 SECTION 4. Subchapter C, Chapter 361, Health and Safety
6 Code, is amended by adding Section 361.1145 to read as follows:

7 Sec. 361.1145. PROHIBITION OF PERMIT FOR CERTAIN
8 SOLIDIFIED, COMMERCIAL INDUSTRIAL SOLID WASTE FACILITIES. The
9 commission may not issue a permit for the storage, processing, or
10 disposal of solidified, commercial, industrial solid waste in a
11 solution-mined salt dome cavern or a sulphur mine located within
12 one mile of a drinking water well, school, place of worship, or
13 public park.

14 SECTION 5. Section 382.056, Health and Safety Code, is
15 amended by amending Subsections (b), (g), (h), (i), (l), (m), and
16 (n) and adding Subsections (s) and (t) to read as follows:

17 (b) The notice must include:

18 (1) a description of the location or proposed location
19 of the facility or federal source;

20 (2) the location at which a copy of the application is
21 available for review and copying as provided by Subsection (d);

22 (3) a description, including a telephone number, of
23 the manner in which the commission may be contacted for further
24 information;

25 (4) a description, including a telephone number, of
26 the manner in which the applicant may be contacted for further
27 information;

1 (5) a description of the applicable procedural rights
2 and obligations of the public, printed in a font style or size that
3 clearly provides emphasis and distinguishes it from the remainder
4 of the notice[, ~~that includes a statement that a person who may be~~
5 ~~affected by emissions of air contaminants from the facility,~~
6 ~~proposed facility, or federal source is entitled to request a~~
7 ~~hearing from the commission~~];

8 (6) a statement that a person who may be affected by
9 emissions of air contaminants from the facility, proposed facility,
10 or federal source is entitled to file a notice of contest;

11 (7) a description of the procedure by which a person
12 may be placed on a mailing list in order to receive additional
13 information about the application;

14 (8) [~~47~~] the time and location of any public meeting
15 to be held under Subsection (e); and

16 (9) [~~48~~] any other information the commission by rule
17 requires.

18 (g) If, in response to the notice published under Subsection
19 (a) for a permit or permit amendment under Section 382.0518 or a
20 permit renewal review under Section 382.055, a person files a
21 notice of contest [~~request~~] during the period provided by
22 commission rule [~~that the commission hold a public hearing~~] and the
23 notice of contest [~~request~~] is not withdrawn before the date the
24 preliminary decision is issued, the applicant shall publish notice
25 of the preliminary decision in a newspaper, and the commission
26 shall seek public comment on the preliminary decision in accordance
27 with [~~The commission shall consider the request for public~~]

1 ~~hearing under~~] the procedures provided by Subsections (i)-(n).
2 However, the [The] commission may not seek further public comment
3 or hold a public hearing [~~under the procedures provided by~~
4 ~~Subsections (i)-(n)]~~ in response to a notice of contest [~~request~~
5 ~~for a public hearing]~~ on an amendment, modification, or renewal
6 that would not result in an increase in allowable emissions and
7 would not result in the emission of an air contaminant not
8 previously emitted.

9 (h) The commission shall consider any hearing request
10 regarding [~~If, in response to the notice published under Subsection~~
11 ~~(a) for~~] a permit under Section 382.054[, ~~a person requests during~~
12 ~~the public comment period provided by commission rule that the~~
13 ~~commission hold a public hearing, the commission shall consider the~~
14 ~~request]~~ under the procedures provided by Section 382.0561 and not
15 under the procedures provided by Subsections (i)-(n).

16 (i) The commission by rule shall establish the form and
17 content of the notice of preliminary decision under Subsection (g),
18 the manner of publication, and the duration of the public comment
19 period. The notice must include:

20 (1) the information required by Subsections
21 [~~Subsection~~] (b) (1)-(5) and (7)-(9);

22 (2) a summary of the preliminary decision;

23 (3) the location at which a copy of the preliminary
24 decision is available for review and copying as provided by
25 Subsection (j);

26 (4) a description of the manner in which comments
27 regarding the preliminary decision may be submitted; and

1 (5) any other information the commission by rule
2 requires.

3 (1) The executive director, in accordance with procedures
4 adopted by the commission by rule, shall file with the chief clerk
5 of the commission a response to each relevant and material public
6 comment on the preliminary decision filed in writing during the
7 public comment period.

8 (m) The chief clerk of the commission shall transmit the
9 executive director's decision, the executive director's response to
10 public comments, and instructions for requesting that the
11 commission reconsider the executive director's decision or hold a
12 contested case hearing to:

13 (1) the applicant;

14 (2) any person who submitted comments during the
15 public comment period;

16 (3) any person who requested to be on the mailing list
17 for the permit action; and

18 (4) any person who timely filed a notice of contest
19 [~~request for a public hearing~~] in response to the notice published
20 under Subsection (a).

21 (n) Except as provided by Section 382.0561, the commission
22 shall consider a request that the commission reconsider the
23 executive director's decision or hold a contested case [~~public~~]
24 hearing in accordance with the procedures provided by Sections
25 5.556 and 5.557, Water Code.

26 (s) If a notice of contest is not filed or is withdrawn under
27 Subsection (g), any public hearing requested in response to a later

1 public notice required solely by federal program requirements, if
2 granted, shall be conducted in accordance with Section 382.0561 and
3 not under Chapter 2001, Government Code.

4 (t) The commission shall extend the public comment period
5 automatically until the close of the public meetings held under
6 Subsection (k). The commission may not extend the period during
7 which a notice of contest or request for reconsideration may be
8 filed.

9 SECTION 6. Section 382.0564, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 382.0564. NOTIFICATION TO OTHER GOVERNMENTAL
12 ENTITIES. (a) The commission by rule may allow for notification of
13 and review by the administrator and affected states of permit
14 applications, revisions, renewals, or draft permits prepared under
15 Sections 382.054-382.0543.

16 (b) The commission shall mail notice of intent to obtain a
17 permit, permit amendment, or other authorization for a
18 rock-crushing facility associated with blasting operations to an
19 affected municipality.

20 (c) An affected municipality entitled to notice under
21 Subsection (b) may submit comments to the commission within 30 days
22 of receiving a notice of intent under Subsection (b).

23 (d) The commission may not issue a permit, permit amendment,
24 or other authorization for a rock-crushing facility associated with
25 blasting operations if the commission receives from an affected
26 municipality a resolution in opposition to issuance of the permit,
27 permit amendment, or other authorization during the 30-day comment

1 period.

2 (e) The commission shall prohibit a currently permitted
3 rock-crushing facility from being associated with blasting
4 operations if:

5 (1) blasting operations have not taken place on the
6 tract for 10 or more years before April 10, 2003; and

7 (2) the commission receives from an affected
8 municipality a resolution in opposition to the currently permitted
9 rock-crushing facility.

10 (f) For purposes of this section, an "affected
11 municipality" means a municipality whose primary source of drinking
12 water is an aquifer made, wholly or partly, of water-bearing
13 limestone or dolomite which is located in a county:

14 (1) that is adjacent to a county with a population of
15 500,000 or more; and

16 (2) in which is located a portion of a body of water
17 into which a discharge of pollutants is prohibited by the
18 commission under 30 T.A.C. Chapter 311.

19 SECTION 7. Section 2003.047, Government Code, is amended by
20 adding Subsections (p) and (q) to read as follows:

21 (p) In designating parties to a hearing on a permit
22 application, the administrative law judge may name as parties only
23 the executive director of the commission, the office of public
24 interest counsel, the permit applicant, and other persons whose
25 hearing requests have been granted by the commission and whose
26 issues have been referred by the commission for a contested case
27 hearing. The executive director may participate in a contested

1 case hearing only to the extent described in Section 5.228, Water
2 Code.

3 (g) An administrative law judge may grant a motion for a
4 summary disposition on any or all of the issues referred for hearing
5 and issue a proposal for decision that resolves the contested case
6 without an evidentiary hearing or with a limited evidentiary
7 hearing as provided by commission rules.

8 SECTION 8. Subchapter B, Chapter 11, Water Code, is amended
9 by adding Sections 11.0235, 11.0236, and 11.0237 to read as
10 follows:

11 Sec. 11.0235. POLICY REGARDING WATERS OF THE STATE.

12 (a) The waters of the state are held in trust for the public, and
13 the right to use state water may be appropriated only as expressly
14 authorized by law.

15 (b) Maintaining the biological soundness of the state's
16 rivers, lakes, bays, and estuaries is of great importance to the
17 public's economic health and general well-being.

18 (c) The legislature has expressly required the commission
19 while balancing all other interests to consider and provide for the
20 freshwater inflows necessary to maintain the viability of the
21 state's bay and estuary systems in the commission's regular
22 granting of permits for the use of state waters.

23 (d) The legislature has not expressly authorized granting
24 water rights exclusively for:

25 (1) instream flows dedicated to environmental needs or
26 inflows to the state's bay and estuary systems; or

27 (2) other similar beneficial uses.

1 (e) The fact that greater pressures and demands are being
2 placed on the water resources of the state makes it of paramount
3 importance to reexamine the process for ensuring that these
4 important priorities are effectively addressed in clear
5 delegations of authority to the commission.

6 Sec. 11.0236. STUDY COMMISSION ON WATER FOR ENVIRONMENTAL
7 FLOWS. (a) In recognition of the importance that the ecological
8 soundness of our riverine, bay, and estuary systems and riparian
9 lands has on the economy, health, and well-being of the state there
10 is created the Study Commission on Water for Environmental Flows.

11 (b) The study commission is composed of 15 members as
12 follows:

13 (1) two members appointed by the governor;
14 (2) five members appointed by the lieutenant governor;
15 (3) five members appointed by the speaker of the house
16 of representatives;

17 (4) the presiding officer of the commission or the
18 presiding officer's designee;

19 (5) the chairman of the board or the chairman's
20 designee; and

21 (6) the presiding officer of the Parks and Wildlife
22 Commission or the presiding officer's designee.

23 (c) Of the members appointed under Subsection (b)(2):

24 (1) one member must represent a river authority or
25 municipal water supply agency or authority;

26 (2) one member must represent an entity that is
27 distinguished by its efforts in resource protection; and

1 (3) three members must be members of the senate.

2 (d) Of the members appointed under Subsection (b)(3):

3 (1) one member must represent a river authority or
4 municipal water supply agency or authority;

5 (2) one member must represent an entity that is
6 distinguished by its efforts in resource protection; and

7 (3) three members must be members of the house of
8 representatives.

9 (e) Each appointed member of the study commission serves at
10 the will of the person who appointed the member.

11 (f) The appointed senator with the most seniority and the
12 appointed house member with the most seniority serve together as
13 co-presiding officers of the study commission.

14 (g) A member of the study commission is not entitled to
15 receive compensation for service on the study commission but is
16 entitled to reimbursement of the travel expenses incurred by the
17 member while conducting the business of the study commission, as
18 provided by the General Appropriations Act.

19 (h) The study commission may accept gifts and grants from
20 any source to be used to carry out a function of the study
21 commission.

22 (i) The commission shall provide staff support for the study
23 commission.

24 (j) The study commission shall conduct public hearings and
25 study public policy implications for balancing the demands on the
26 water resources of the state resulting from a growing population
27 with the requirements of the riverine, bay, and estuary systems

1 including granting permits for instream flows dedicated to
2 environmental needs or bay and estuary inflows, use of the Texas
3 Water Trust, and any other issues that the study commission
4 determines have importance and relevance to the protection of
5 environmental flows. In evaluating the options for providing
6 adequate environmental flows, the study commission shall take
7 notice of the strong public policy imperative that exists in this
8 state recognizing that environmental flows are important to the
9 biological health of our parks, game preserves, and bay and estuary
10 systems and are high priorities in the permitting process. The
11 study commission shall specifically address ways that the
12 ecological soundness of these systems will be ensured in the water
13 allocation process.

14 (k) The study commission:

15 (1) shall appoint an advisory scientific committee
16 that will:

17 (A) serve as impartial scientific advisors and
18 reviewers for the study commission; and

19 (B) have a membership of no fewer than five and no
20 more than nine total members chosen by the study commission to
21 represent a variety of areas of relevant technical expertise;

22 (2) may appoint additional advisory committees to
23 assist the study commission; and

24 (3) may draft proposed legislation to modify existing
25 water-rights permitting statutes.

26 (1) Not later than December 1, 2004, the study commission
27 shall issue a report summarizing:

1 (1) any hearings conducted by the study commission;
2 (2) any studies conducted by the study commission;
3 (3) any legislation proposed by the study commission;
4 and
5 (4) any other findings and recommendations of the
6 study commission.

7 (m) The study commission shall promptly deliver copies of
8 the report to the governor, lieutenant governor, and speaker of the
9 house of representatives.

10 (n) The study commission shall adopt rules to administer
11 this section.

12 (o) The study commission is abolished and this section
13 expires September 1, 2005.

14 Sec. 11.0237. WATER RIGHTS FOR INSTREAM FLOWS DEDICATED TO
15 ENVIRONMENTAL NEEDS OR BAY AND ESTUARY INFLOWS. (a) The commission
16 may not issue a new permit for instream flows dedicated to
17 environmental needs or bay and estuary inflows. This section does
18 not prohibit the commission from issuing an amendment to an
19 existing permit or certificate of adjudication to change the use to
20 or add a use for instream flows dedicated to environmental needs or
21 bay and estuary inflows.

22 (b) This section does not alter the commission's
23 obligations under Section 11.042(b), 11.046(b), 11.085(k)(2)(F),
24 11.134(b)(3)(D), 11.147, 11.1491, 16.058, or 16.059.

25 (c) This section expires September 1, 2005.

26 SECTION 9. Subsections (d) and (e), Section 11.147, Water
27 Code, are amended to read as follows:

1 (d) In its consideration of an application to store, take,
2 or divert water, the commission shall include in the permit, to the
3 extent practicable when considering all public interests, those
4 conditions considered by the commission necessary to maintain
5 ~~[consider the effect, if any, of the issuance of the permit on]~~
6 existing instream uses and water quality of the stream or river to
7 which the application applies.

8 (e) The commission shall include in the permit, to the
9 extent practicable when considering all public interests, those
10 conditions considered by the commission necessary to maintain ~~[also~~
11 ~~consider the effect, if any, of the issuance of the permit on]~~ fish
12 and wildlife habitats.

13 SECTION 10. Rules adopted by the Texas Commission on
14 Environmental Quality under Section 26.040, Water Code, before the
15 effective date of this Act are validated as of the dates they were
16 adopted and remain valid until they are modified or repealed by the
17 commission.

18 SECTION 11. (a) Except as provided by Subsection (b) of
19 this section, this Act takes effect September 1, 2003.

20 (b) Sections 8 and 9 of this Act take effect immediately if
21 this Act receives a vote of two-thirds of all the members elected to
22 each house, as provided by Section 39, Article III, Texas
23 Constitution. If this Act does not receive the vote necessary for
24 immediate effect, Sections 8 and 9 of this Act take effect September
25 1, 2003.

26 (c) The changes in law made by Sections 1, 2, 4, 5, and 7 of
27 this Act apply only to an application for a permit, permit

1 amendment, or permit renewal for which the notice of preliminary
2 decision required by Section 5.553, Water Code, or Section
3 382.056(g), Health and Safety Code, is published on or after
4 September 1, 2003. A permit, permit amendment, or permit renewal
5 for which the notice of preliminary decision required by Section
6 5.553, Water Code, or Section 382.056(g), Health and Safety Code,
7 is published before September 1, 2003, is governed by the law in
8 effect on the date it was published, and that law is continued in
9 effect for that purpose.

10 (d) The changes in law made by Sections 8 and 9 of this Act
11 apply to a permit application pending before the Texas Commission
12 on Environmental Quality on the effective date of those sections or
13 filed with the commission on or after that date.

ADOPTED

MAY 27 2003

Atty. Gen.
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY *Ken Cuccinelli*

1 Amend C.S.H.B. 2877 by adding four appropriately numbered
2 sections as follows, and renumbering all other sections
3 accordingly:

4 AMENDMENT SECTION 1. Section 382.056(r), Health and Safety
5 Code, is amended as follows:

6 (r) This section does not apply to:

7 (1) the relocation or change of location of a portable
8 facility to a site where a portable facility [~~permitted by the~~
9 ~~commission is located if no portable facility~~] has been located
10 at the proposed site at any time during the previous two years;
11 [or]

12 (2) a facility located temporarily in the right-of-way,
13 or contiguous to the right-of-way, of a public works project; or

14 (3) a facility described by Section 382.065(c), unless
15 that facility is in a county with a population of 2.4 million or
16 more or in a county adjacent to such a county.

17 AMENDMENT SECTION 2. Section 382.056, Health and Safety
18 Code, as added by Chapter 965, Acts of the 77th Legislature,
19 Regular Session, 2001, is amended to read as follows:

- 26

1 Section 382.065. CERTAIN LOCATIONS FOR OPERATING CONCRETE
2 CRUSHING FACILITY PROHIBITED. (a) The commission by rule shall
3 prohibit the ~~[location of or]~~ operation of a concrete crushing
4 facility at a location within 440 yards of a building in use
5 ~~[used]~~ as a single or multifamily residence, school, or place of
6 worship at the time the application for a permit to operate the
7 facility at a site near the residence, school, or place of
8 worship is filed with the commission. The measurement of
9 distance for purposes of this subsection shall be taken from the
10 point on the concrete crushing facility that is nearest to the
11 residence, school, or place of worship toward the point on the
12 residence, school, or place of worship that is nearest the
13 concrete crushing facility.

14 (b) Subsection (a) ~~[This section]~~ does not apply to a [an
15 existing] concrete crushing facility:

16 (1) at a location for which commission authorization
17 for the operation of a concrete crushing facility was in effect
18 on September 1, 2001; or

19 (2) at a location that satisfies the distance
20 requirements of Subsection (a) at the time the application for
21 the initial authorization for the operation of that facility at
22 that location is filed with the commission, provided that the
23 authorization is granted and maintained, regardless of whether a

1 single or multifamily residence, school, or place of worship is
2 subsequently built or put to use within 440 yards of the
3 facility.

4 (c) Except as provided by Subsection (d), Subsection (a)
5 does not apply to a concrete crushing facility that:

6 (1) is engaged in crushing concrete and other materials
7 produced by the demolition of a structure at the location of the
8 structure and the concrete and other materials are being crushed
9 primarily for use at that location;

10 (2) operates at that location for not more than 180
11 days;

12 (3) the commission determines will cause no adverse
13 environmental or health effects by operating at that location;
14 and

15 (4) complies with conditions stated in commission
16 rules, including operating conditions.

17 (d) Notwithstanding Subsection (c), Subsection (a) applies
18 to a concrete crushing facility in a county with a population of
19 2.4 million or more or in a county adjacent to such a county.

20 AMENDMENT SECTION 3. The Texas Commission on Environmental
21 Quality shall adopt rules to implement Section 382.065, Health
22 and Safety Code, as amended by this Act, as soon as practicable
23 and not later than January 1, 2004.

1 AMENDMENT SECTION 4. A change in law made by this Act the
2 effect of which is to restrict the location or operation of a
3 concrete crushing facility does not apply to a facility for which
4 an application for authorization to operate at a particular
5 location is filed before the effective date of this Act.

ADOPTED

MAY 27 2003

Floor Amendment

2

Antony Spaw
Secretary of the Senate

By

Ken Ambister

Amend CSHB 2877 by adding a new SECTION 6 to read as follows and renumbering the following SECTIONS appropriately:

SECTION 6. Section 7.141, Water Code, is amended by adding Subdivision (2-a) to read as follows:

(2-a) "Dispose of" means to discharge, deposit, inject, dump, spill, leak, or place solid waste, hazardous waste, medical waste, used oil, low-level radioactive waste, or a lead-acid battery, whether containerized or uncontainerized, into or on land or water so that the solid waste, hazardous waste, medical waste, used oil, low-level radioactive waste, lead-acid battery, or any constituent thereof may be emitted into the air, discharged into surface water or groundwater, or introduced into the environment in any other manner. The term does not include passive migration, continuous release, seepage, or other movement that occurs:

and

(A) after the substance is initially disposed of;

(B) without human initiation or assistance.

ADOPTED

MAY 27 2003

FLOOR AMENDMENT NO. 3

Antony Spaw
Secretary of the Senate

By *Kon Lamberton*

Amend H.B.2877 as follows:

(1) Insert a new SECTION of the bill to read as follows:

SECTION ____ . Section 36.101, Water Code, is amended by adding Subsection (d) to read as follows:

(d) The commission has principal and exclusive authority as to the control, regulation, or abatement of nonpoint source pollution of water or other regulation of water quality in terms of limiting a landowner's ability to develop or use that land in the jurisdiction of any water district or authority with management and regulatory authority over groundwater withdrawals.

(2) Insert a new SECTION of the bill to read as follows:

SECTION ____ . This section supersedes any other provision of this Act to the extent of any conflict. Section 36.101(d), Water Code, as added by this Act, supersedes any other applicable law or action taken under that law to the extent of any conflict. Any rule or order of an applicable district or authority purporting to regulate water quality as described by the change in law made by this Act to Section 36.101, Water Code, may not be enforced regardless of whether the adoption date of the rule or order is before, on, or after the effective date of this Act.

ADOPTED

MAY 27 2003

Lotay Spaul
Secretary of the Senate

FLOOR AMENDMENT NO.

4

BY:

Lucio

1 Amend C.S.H.B. 2877 by adding a new Subsection (g) to
2 Section 36.015, Water Code, to read as follows:

3 (g) Notwithstanding other law and any other applicable
4 provisions of this chapter, the commission shall certify a
5 petition filed under Section 36.013 and give notice and conduct
6 a public meeting on the petition if the filings under Section
7 36.013 (b) and (c) show that the district is comprised of
8 400,000 or more coterminous acres owned by a single landowner.
9 Chapter 49, Water Code, does not apply to a district created
10 under this subsection, except that Section 49.223, Water Code,
11 shall apply to the district.

ADOPTED

MAY 27 2003

FLOOR AMENDMENT NO. 6

Lotay Spaw
Secretary of the Senate

BY: Jackson

Amend C.S.H.B. 2877 as follows:

(1) Strike existing Section 361.122, Health and Safety Code, and replace it with the following language by adding a new SECTION and renumbering the subsequent sections accordingly:

SECTION ____ Section 361.122, Health and Safety Code, is amended to read as follows:

Sec. 361.122. DENIAL OF CERTAIN LANDFILL PERMITS. (a) The commission may not issue a permit for a Type IV landfill if:

(1) the proposed site is located within 100 feet of a canal that is used as a public drinking water source or for irrigation of crops used for human or animal consumption;

(2) the proposed site is located in a county with a population of more than 225,000 that is located adjacent to the Gulf of Mexico; and

(3) prior to final consideration of the application by the commission, the commissioners of the county in which the facility is located have adopted a resolution recommending denial of the application.

(b) In addition to the restriction on the location of a Type IV landfill under Subsection (a), the commission may not issue a permit for a Type IV landfill if, on or before January 13, 2003, the proposed facility was determined by the applicable regional planning commission created under Chapter 391, Local Government Code, to be incompatible with a regional solid waste management plan adopted under Section 363.062 of this code.

ADOPTED

MAY 27 2003

Lotay Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 2

BY: *Madala*

- 1 Amend C.S.H.B. 2877 as follows:
- 2 (1) On page 1, line 22, strike "and (h)"
- 3 (2) On page 1, line 57-61, strike subsection (h).

ADOPTED

MAY 27 2003

Atay Spaw
Secretary of the Senate

COMMITTEE AMENDMENT NO. 8

BY: *Willis*

1 Amend C.S.H.B. No. 2877 by inserting a new appropriately
2 numbered SECTION and renumbering subsequent sections accordingly.

3 SECTION ____ TEXAS COMMISSION ON ENVIRONMENTAL QUALITY;
4 EXPEDITED LETTER FEE. Section 5.701, Texas Water Code is amended by
5 adding subsection (r) to read as follows:

6 r) The fee for processing a request for an expedited letter
7 from the executive director stating the total depth of surface
8 casing needed during the drilling of wells to protect usable ground
9 waters in the state and required for the processing of certain
10 permits from the Railroad Commission of Texas is not to exceed \$75.
11

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

May 23, 2003

TO: Honorable Kenneth Armbrister, Chair, Senate Committee on Natural Resources

FROM: John Keel, Director, Legislative Budget Board

IN RE: **HB2877** by Bonnen (Relating to certain permitting procedures of the Texas Commission on Environmental Quality.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2877, Committee Report 2nd House, Substituted: a negative impact of (\$30,000) through the biennium ending August 31, 2005.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2004	(\$15,000)
2005	(\$15,000)
2006	\$0
2007	\$0
2008	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>GENERAL REVENUE FUND</i> 1	Change in Number of State Employees from FY 2003
2004	(\$15,000)	0.3
2005	(\$15,000)	0.3
2006	\$0	0.0
2007	\$0	0.0
2008	\$0	0.0

Fiscal Analysis

The bill would revise the public participation procedures applicable to environmental permit applications where there is an opportunity to request a contested case hearing at the Texas Commission on Environmental Quality (TCEQ). The executive director of the TCEQ would be required to respond only to comments received in writing, in contrast to the current process that requires a response to spoken comments received at public meetings.

The bill would impose stricter time frames for the filing of hearing requests. As opposed to the current process that allows for hearing requests to be considered timely at any point after the application is filed, a hearing request would not be timely unless it was filed during the prescribed period following transmittal of the executive director's response to comments. The bill also would revise the time frame for filing requests for reconsideration to allow for filing after the

publication of the executive director's preliminary decision.

New criteria would also be imposed on persons requesting a hearing. Only persons who submitted timely written comments could request a hearing, and their hearing request could only relate to the issues they raised during the comment period and could not relate to issues that may have been raised by others. The bill also revised the criteria for issues that must be contained in a valid hearing request. Under the bill the issues would have to be supported by competent evidence showing a reasonable basis for a factual dispute.

The bill would impose requirements for air applications. A person challenging issuance of an air permit would be required to file a "request for initiation of the public participation process" in response to the first notice of the application, rather than a request for hearing as under current law. As with the permits for other media, the person would also need to file a hearing request following transmittal of the response to comments.

The bill contains provisions relating to rock crushers with blasting operations. The TCEQ would be required to prohibit rock crushers from blasting operations if an affected municipality adopts a resolution in opposition to the facility.

The bill would create the Study Commission on Environmental Flows as a 15-member commission. The TCEQ would provide staff to the commission. The bill also would suspend the processing of instream permit applications.

Methodology

The TCEQ would be required to implement rules and procedures. These costs are not expected to be significant.

Costs to the Department of Transportation associated with the bill's provisions regarding rock crushers are not expected to be significant.

The provision relating to the TCEQ being required to provide staffing to the Study Commission on Water for Environmental Flows is expected to result in a cost of \$15,000 annually to the TCEQ and require 0.3 additional FTE.

Local Government Impact

No significant fiscal implication to units of local government is anticipated. Local governments could experience increased public notification costs. However, these costs are not expected to be significant.

Source Agencies: 580 Water Development Board, 582 Commission on Environmental Quality, 601 Department of Transportation

LBB Staff: JK, CL, TL

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

May 9, 2003

TO: Honorable Kenneth Armbrister, Chair, Senate Committee on Natural Resources

FROM: John Keel, Director, Legislative Budget Board

IN RE: HB2877 by Bonnen (Relating to the permitting procedures of the Texas Commission on Environmental Quality.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would require the Texas Commission on Environmental Quality (TCEQ) to extend public comment periods and makes changes to contested case hearing requirements. It would also change requirements for responding to public comments and place restrictions on the types of issues that can be referred to hearing by the TCEQ.

The changes proposed by the bill are not expected to require significant additional resources to implement.

Local Government Impact

No significant fiscal implication to units of local government is anticipated. Local governments could experience increased public notification costs. However, these costs are not expected to be significant.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JK, CL, TL

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

Revision 1

April 18, 2003

TO: Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

FROM: John Keel, Director, Legislative Budget Board

IN RE: HB2877 by Bonnen (Relating to the permitting procedures of the Texas Commission on Environmental Quality.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would require the Texas Commission on Environmental Quality (TCEQ) to extend public comment periods and makes changes to contested case hearing requirements. It would also change requirements for responding to public comments and place restrictions on the types of issues that can be referred to hearing by the TCEQ.

The changes proposed by the bill are not expected to require significant additional resources to implement.

Local Government Impact

No significant fiscal implication to units of local government is anticipated. Local governments could experience increased public notification costs. However, these costs are not expected to be significant.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JK, CL, TL

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

April 18, 2003

TO: Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

FROM: John Keel, Director, Legislative Budget Board

IN RE: HB2877 by Bonnen (Relating to the permitting procedures of the Texas Commission on Environmental Quality.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would require the Texas Commission on Environmental Quality (TCEQ) to extend public comment periods and makes changes to contested case hearing requirements. It would also change requirements for responding to public comments and place restrictions on the types of issues that can be referred to hearing by the TCEQ.

The changes proposed by the bill are not expected to require significant additional resources to implement.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 582 Commission on Environmental Quality

LBB Staff: JK, CL, TL

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

April 7, 2003

TO: Honorable Dennis Bonnen, Chair, House Committee on Environmental Regulation

FROM: John Keel, Director, Legislative Budget Board

IN RE: HB2877 by Bonnen (Relating to the permitting procedures of the Texas Commission on Environmental Quality.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would revise the public participation procedures applicable to environmental permit applications where there is an opportunity to request a contested case hearing. The Executive Director (ED) of the Texas Commission on Environmental Quality (ED) would be required to respond only to comments received in writing, in contrast to the current process that requires a response to spoken comments received at public meetings.

The bill would impose stricter time frames for the filing of hearing requests. As opposed to the current process that allows for hearing requests to be considered timely at any point after the application is filed, a hearing request would not be timely unless it was filed during the prescribed period following transmittal of the ED's response to comments. The bill also would revise the time frame for filing requests for reconsideration to allow for filing after the publication of the ED's preliminary decision.

New criteria would also be imposed on persons requesting a hearing with the State Office of Administrative Hearings (SOAH). Only persons who submitted timely written comments could request a hearing, and their hearing request could only relate to the issues they raised during the comment period and could not relate to issues that may have been raised by others. The bill also revised the criteria for issues that must be contained in a valid hearing request. Under the bill the issues would have to be supported by competent evidence showing a reasonable basis for a factual dispute. The issue would have to be discrete and not a broad or general objection.

The bill would also impose requirements for air applications. A person challenging issuance of an air permit would be required to file a "request for initiation of the public participation process" in response to the first notice of the application, rather than a request for hearing.

The bill could result in some increased administrative costs to the TCEQ. However, such costs are not expected to be significant. There could be fewer cases referred to the SOAH as a result of the bill's passage. However, such savings are not expected to be significant.

Local Government Impact

No significant fiscal implications are anticipated for local governments.

Local governments which have equipment going through the permitting process may experience increased costs due to additional public notice criteria. However, such costs are not expected to be significant.

Source Agencies: 360 State Office of Administrative Hearings, 582 Commission on Environmental Quality

LBB Staff: JK, CL, TL

78TH LEGISLATURE

COAUTHOR AUTHORIZATION

(please request your coauthors to sign this form
in lieu of the front or the back of the original bill)

Bill or Resolution Number: HB2877

Dennis Bonnen
signature of **primary** author

DENNIS BONNEN
printed name of **primary** author

3-12-03
Date

PERMISSION TO SIGN HB2877 HAS BEEN GIVEN TO (check only one of the following):
(bill or resolution #)

☒ ALL REPRESENTATIVES

☐ THE FOLLOWING REPRESENTATIVE(S): _____

I authorize the Chief Clerk to include my name as a coauthor of the legislation indicated above:

A2115 Allen	Date	A2450 Cook, Byron	Date	A2795 Farabee	Date
A2125 Alonzo	Date	A2565 Cook, Robert "Robby"	Date	A2810 Farrar	Date
A2160 Bailey	Date	A2595 Corte	Date	A2840 Flores	Date
A2170 Baxter	Date	A2605 Crabb	Date	A2850 Flynn	Date
A2205 Berman	Date	A2610 Craddick	Date	A2920 Gallego	Date
A2230 Bohac	Date	A2640 Crownover	Date	A2925 Garza	Date
A2250 Bonnen	Date	A2620 Davis, John	Date	A2960 Gattis	Date
A2280 Branch	Date	A2625 Davis, Yvonne	Date	A2945 Geren	Date
A2265 Brown, Betty	Date	A2635 Dawson	Date	A2935 Giddings	Date
A2270 Brown, Fred	Date	A2680 Delisi	Date	A2985 Goodman	Date
A2255 Burnam	Date	A3385 Denny	Date	A2990 Goolsby	Date
A2295 Callegari	Date	A2690 Deshotel	Date	A3010 Griggs	Date
A2290 Campbell	Date	A2705 Driver	Date	A3020 Grusendorf	Date
A2350 Canales	Date	A2665 Dukes	Date	A3045 Guillen	Date
A2300 Capelo	Date	A2660 Dunnam	Date	A3030 Gutierrez	Date
A2490 Casteel	Date	A2650 Dutton	Date	A3035 Haggerty	Date
A2495 Castro	Date	A2770 Edwards	Date	A3050 Hamilton	Date
A2585 Chavez	Date	A2775 Eiland	Date	A2695 Hamric	Date
A2480 Chisum	Date	A2780 Eissler	Date	A3160 Hardcastle	Date
A2525 Christian	Date	A2785 Elkins	Date	A3165 Harper-Brown	Date
A2435 Coleman	Date	A2790 Ellis	Date	A3170 Hartnett	Date

A3180 Heflin	Date	A3715 Madden	Date	A4220 Riddle	Date
A3190 Hegar	Date	A3750 Marchant	Date	A4250 Ritter	Date
A3250 Hilderbran	Date	A2835 Martinez Fischer	Date	A4270 Rodriguez	Date
A3275 Hill	Date	A3665 McCall	Date	A4350 Rose	Date
A3305 Hochberg	Date	A3650 McClendon	Date	A4420 Seaman	Date
A3290 Hodge	Date	A3845 McReynolds	Date	A4525 Smith, Todd	Date
A3325 Homer	Date	A3830 Menendez	Date	A4540 Smith, Wayne	Date
A3320 Hope	Date	A3815 Mercer	Date	A4530 Smithce	Date
A3330 Hopson	Date	A3840 Merritt	Date	A4550 Solis	Date
A3315 Howard	Date	A3835 Miller	Date	A4505 Solomons	Date
A3340 Hughes	Date	A3855 Moreno, Joe	Date	A4560 Stick	Date
A3355 Hunter	Date	A3860 Moreno, Paul	Date	A4570 Swinford	Date
A3360 Hupp	Date	A3870 Morrison	Date	A4585 Talton	Date
A3375 Isett	Date	A3865 Mowery	Date	A4600 Taylor	Date
A3405 Jones, Delwin	Date	A3885 Naishtat	Date	A4605 Telford	Date
A3420 Jones, Elizabeth	Date	A3895 Nixon	Date	A4630 Thompson	Date
A3400 Jones, Jesse	Date	A3900 Noriega	Date	A4650 Truitt	Date
A3475 Keel	Date	A3880 Oliveira	Date	A4685 Turner	Date
A3410 Keffer, Bill	Date	A3886 Olivo	Date	A4695 Uresti	Date
A3480 Keffer, Jim	Date	A4100 Paxton	Date	A4700 Van Arsdale	Date
A3470 King	Date	A4140 Pena	Date	A4800 Villarreal	Date
A3495 Kolkhorst	Date	A4160 Phillips	Date	A4995 West	Date
A3485 Krusee	Date	A4180 Pickett	Date	A5000 Wilson	Date
A3450 Kuempel	Date	A4185 Pitts	Date	A5020 Wise	Date
A3510 Laney	Date	A4200 Puente	Date	A5015 Wohlgemuth	Date
A3540 Laubenberg	Date	A4230 Quintanilla	Date	A4980 Wolens	Date
A3605 Lewis	Date	A4240 Rangel	Date	A4985 Wong	Date
A3620 Luna	Date	A4215 Raymond	Date	A5005 Woolley	Date
A3700 Mabry	Date	A4236 Reyna	Date	A5150 Zedler	Date

for chief clerk use only

Bill or Resolution Number:

⁷
HB 2877

JOINT AUTHOR AUTHORIZATION

As primary author of HB 2877 I hereby authorize the following joint author(s):
(bill or resolution #)

MARK S. HOMER
printed name of joint author #1

Mark S. Homer
signature of joint author #1

3/17/03

WARREN CHISUM
printed name of joint author #2

Warren Chisum
signature of joint author #2

JACK STICK
printed name of joint author #3 DB

Jack Stick
signature of joint author #3

5/2/03

printed name of joint author #4

signature of joint author #4

Dennis Bonen
signature of primary author

3-17-03
date

A BILL TO BE ENTITLED
AN ACT

relating to the permitting procedures of the Texas Commission on Environmental Quality.

MAR 13 2003 Filed with the Chief Clerk

MAR 26 2003 Read first time and referred to Committee on Environmental Regulation

APR 15 2003 Reported favorably (~~unfavorably~~)
(as substituted)

APR 25 2003 Sent to Committee on (Calendars)
(~~Environmental Regulation~~)

MAY 02 2003 Read second time (comm. subst.) (amended); passed to third reading (~~by a~~) by a (non-record vote)
(~~unanimous consent~~)

Constitutional rule requiring bills to be read on three several days suspended (failed to suspend)
by a vote of _____ yeas, _____ nays, _____ present, not voting

MAY 05 2003 Read third time (~~unanimous consent~~), finally passed (~~unanimous consent~~) by a (non-record vote)
(~~unanimous consent~~)

MAY 06 2003 Engrossed

MAY 06 2003 Sent to Senate

Robert Haney
CHIEF CLERK OF THE HOUSE

OTHER HOUSE ACTION:

MAY 30 2003 ~~POINT OF ORDER SUSTAINED~~

MAY 29 2003 ~~POINT OF ORDER SUSTAINED~~

MAY 29 2003 Returned to the Senate for further action.

MAY 06 2003 Received from the House

MAY 08 2003 Read and referred to Committee on NATURAL RESOURCES

Reported favorably _____

MAY 23 2003 Reported adversely, with favorable Committee Substitute; Committee Substitute read first time

Ordered not printed

Laid before the Senate

MAY 27 2003 Senate and Constitutional Rules to permit consideration suspended by (unanimous consent)
_____ yeas, _____ nays)

MAY 27 2003 Read second time, amended, and passed to third reading by (unanimous consent)
(a viva voce vote)
_____ yeas, _____ nays)

MAY 27 2003 Senate and Constitutional 3 Day Rules suspended by a vote of 28 yeas, 3 nays

MAY 27 2003 Read third time, _____, and passed by (a viva voce vote)
_____ yeas, _____ nays)

May 27, 2003 Returned to the House

Latoy Spaw
SECRETARY OF THE SENATE

OTHER SENATE ACTION:

MAY 30 2003 Final passage reconsidered by unanimous consent

MAY 30 2003 Two floor amendments adopted.

MAY 30 2003 Again finally passed a viva voce vote

~~MAY 27 2003~~

Returned from the Senate (as substituted)
(with amendments)

House concurred in Senate amendments by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

House refused to concur in Senate amendments and requested the appointment of a conference committee
by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)

House conferees appointed: _____, Chair; _____,

Senate granted House request. Senate conferees appointed: _____, Chair; _____,

Conference committee report adopted (rejected) by the House by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

Conference committee report adopted (rejected) by the Senate by a (viva voce vote)
(record vote of _____ yeas, _____ nays)

CO. MAY 27 PM 9:04
HOUSE OF REPRESENTATIVES

CO. MAY 27 PM 9:04
HOUSE OF REPRESENTATIVES